



Minutes of MAYOR AND COUNCIL Meeting

Approved by Mayor and Council
on February 1, 2005

Date of Meeting: May 10, 2004

The Mayor and Council of the City of Tucson met in regular session, at the Leo Rich Theatre, Tucson Convention Center, 260 South Church Avenue, Tucson, Arizona, at 5:42 p.m., on Monday, May 10, 2004, all members having been notified of the time and place thereof.

1. ROLL CALL

The meeting was called to order by Mayor Walkup and upon roll call, those present and absent were:

Present:

José J. Ibarra	Council Member Ward 1
Carol W. West	Council Member Ward 2
Kathleen Dunbar	Council Member Ward 3
Shirley C. Scott	Council Member Ward 4
Steve Leal	Council Member Ward 5
Fred Ronstadt	Vice Mayor, Council Member Ward 6
Robert E. Walkup	Mayor

Absent/Excused: None

Staff Members Present:

James Keene	City Manager
Michael House	City Attorney
Kathleen S. Detrick	City Clerk
Michael D. Letcher	Deputy City Manager

2. INVOCATION AND PLEDGE OF ALLEGIANCE

The invocation was given by Reverend Philip S. Kruis, Rincon Mountain Presbyterian Church, after which the pledge of allegiance was presented by the entire assembly.

Presentation

- a. Mayor Walkup proclaimed the month of May to be National Landscape Architecture Month.

3. MAYOR AND COUNCIL REPORT: SUMMARY OF CURRENT EVENTS

Mayor Walkup announced City Manager's communication number 223, dated May 10, 2004, would be received into and made a part of the record. He also announced this was the time scheduled to allow members of the Mayor and Council to report on current events and asked if there were any reports.

- a. Council Member West thanked Channel 12 for televising the Ward 2 Town Hall for Seniors. If anyone missed it they could catch the rebroadcast on May 13, 2004, at 6:30 p.m. or May 14, 2004, at 11:00 am. On Tuesday, May 11, 2004, at 6:30 p.m., Ward 2 would host another Town Hall, "Be Water Aware" with special information from the Pima County Health Department on the West Nile Virus. The Town Hall would be held at 7575 E. Speedway.
- b. Vice Mayor Ronstadt announced that the Tucson Police Foundation presented a check for thirty thousand dollars to send members of the Hardesty family, as well as members of Officer Hardesty's squad, to Washington, D.C. to be present when the name of Officer Patrick Hardesty is unveiled at the Law Enforcement Memorial.

4. CITY MANAGER'S REPORT: SUMMARY OF CURRENT EVENTS

Mayor Walkup announced City Manager's communication number 224, dated May 10, 2004, would be received into and made a part of the record. He asked for the City Manager's report.

James Keene, City Manager, reported:

- a. On Thursday, May 13, 2004, at the Manning House, there would be a forum to discuss housing and real estate trends in the downtown entitled, "Housing in the City Center".
- b. Todd Sander, City of Tucson Chief Information Officer, was named the 2003 Public Technologist of the Year. This national award was presented to honor a stellar combination of public service and technology.

5. LIQUOR LICENSE APPLICATIONS

Mayor Walkup announced City Manager's communication number 218, dated May 10, 2004, would be received into and made a part of the record. He asked the City Clerk to read the liquor license agenda.

Kathleen S. Detrick, City Clerk, announced liquor license applications 5b1, Kimpo Oriental Market, and 5b6, Valentino's, had protests filed and should be considered separately. The remainder of the licenses had a staff recommendation for approval.

Mayor Walkup recognized Council Member Ibarra.

Council Member Ibarra asked that application 5b3, Target 1316, also be considered separately, in case there was someone present who wished to address this license.

b. New Licenses

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|----|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------|
| 1. | Kimpo Oriental Market
5595 E. Fifth Street
Applicant: Mi Sook Jung
City 018-04, Ward 6
Series 10
Action must be taken by: May 20, 2004
Public Opinion: Protest Filed
Considered separately | Staff Recommendation

Police: In Compliance
DSD: In Compliance
Revenue: In Compliance |
| 2. | Yukis Japanese Restaurant #2
2962 N. Campbell Avenue
Applicant: Hyung K. Kim
City 019-04, Ward 3
Series 12
Action must be taken by: May 24, 2004 | Staff Recommendation

Police: In Compliance
DSD: In Compliance
Revenue: In Compliance |
| 3. | Target #1316
1225 W. Irvington Road
Applicant: Robert J. Benton
City 020-04, Ward 1
Series 10
Action must be taken by: May 24, 2004
Considered separately | Staff Recommendation

Police: In Compliance
DSD: In Compliance
Revenue: In Compliance |

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| 4. | Ichiban Japanese Restaurant
64 N. Harrison Road, #150
Applicant: Sook Ja Strub
City 022-04, Ward 2
Series 12
Action must be taken by: May 30, 2004 | Staff Recommendation

Police: In Compliance
DSD: In Compliance
Revenue: In Compliance |
| 5. | Quesadilla's Grill
110 S. Church, #7136
Applicant: Gelma J. Reyes
City 023-04, Ward 6
Series 12
Action must be taken by: May 29, 2004 | Staff Recommendation

Police: In Compliance
DSD: In Compliance
Revenue: In Compliance |

Person Transfers

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|----|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------|
| 6. | Valentino's
4696 S. Twelfth Avenue
Applicant: Blanca E. Morales
City 021-04, Ward 1
Series 6
Action must be taken by: May 30, 2004
Public Opinion: Protest Filed
Considered separately | Staff Recommendation

Police: In Compliance
DSD: In Compliance
Revenue: In Compliance |
|----|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------|

It was moved by Council Member Ibarra, duly seconded, and carried by a voice vote of 7 to 0, that liquor licenses 5b2, 5b4, and 5b5, be forwarded to the Arizona State Liquor Board with a recommendation for approval.

b. New License

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|----|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------|
| 1. | Kimpo Oriental Market
5595 E. Fifth Street
Applicant: Mi Sook Jung
City 018-04, Ward 6
Series 10
Action must be taken by: May 20, 2004
Public Opinion: Protest Filed | Staff Recommendation

Police: In Compliance
DSD: In Compliance
Revenue: In Compliance |
|----|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------|

Kathleen S. Detrick, City Clerk, announced the first license to be considered separately was 5b1, Kimpo Oriental Market. Protests had been filed and the applicant had not checked in. The license is located in Ward 6.

Mayor Walkup recognized Vice Mayor Ronstadt

Vice Mayor Ronstadt asked if any of the protestors were present. There were no protestors present.

It was moved by Vice Mayor Ronstadt, duly seconded, and carried by a voice vote of 7 to 0, that liquor license application 5b1 be forwarded to the Arizona State Liquor Board with a recommendation for approval.

b. New License

3.	Target #1316	Staff Recommendation
	1225 W. Irvington Road	
	Applicant: Robert J. Benton	Police: In Compliance
	City 020-04, Ward 1	DSD: In Compliance
	Series 10	Revenue: In Compliance
	Action must be taken by: May 24, 2004	

Kathleen S. Detrick, City Clerk, announced the next license to be considered separately was 5b3, Target 1316. The applicant had not checked in, but there was a request to speak in support of the application.

Council Member Ibarra asked if anyone wished to speak against the application. Hearing no one, he asked if anyone would like to address the Mayor and Council in support of the application.

Thomas Aguilera, from the Law Office of Thomas Aguilera, said he was the lawyer for the applicant and he was asked to come to the meeting to answer any questions. There were protests filed in this case and it was a person to person transfer.

Council Member Ibarra asked if he was sure he was talking about the right case.

Mr. Aguilera responded with Valentino's.

Council Member Ibarra responded that the Council was addressing Target 1316.

Mr. Aguilera apologized and said that he thought the Mayor and Council just went to Valentino's.

Council Member Ibarra explained the Valentino's license would be considered next.

Nicholas Guttilla, attorney for the applicant, said he was there to answer any questions regarding the Target application.

Council Member Ibarra asked if any of the protestors were present. There were no protestors present.

It was moved by Council Member Ibarra, duly seconded, and carried by a voice vote of 7 to 0, that liquor license application 5b3, be forwarded to the Arizona State Liquor Board with a recommendation for approval.

Person Transfers

6.	Valentino's 4696 S. Twelfth Avenue Applicant: Blanca E. Morales City 021-04, Ward 1 Series 6 Action must be taken by: May 30, 2004 Public Opinion: Protest Filed	Staff Recommendation Police: In Compliance DSD: In Compliance Revenue: In Compliance
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Kathleen S. Detrick, City Clerk, announced the final license to be considered separately was Valentino's. Protests had been filed.

Mayor Walkup recognized Council Member Ibarra.

Council Member Ibarra asked the representative for Valentino's to come forward.

Thomas Aguilera, from the Law Office of Thomas Aguilera, explained that this was a person to person transfer and he was there to answer any questions. He did not see any personal qualification issues presented by the Tucson Police Department or Development Services. An application was pulled because Development Services still had a question about their certificate of occupancy, and they finally did that so they were able to move ahead.

Council Member Ibarra asked him to stand by and then asked if anyone else in the audience wished to address the council on this issue, whether it was a protest or in support from the neighborhood.

Council Member Ibarra said this was an issue that came up in their neighborhood and he thought Michael House, City Attorney, would be helping them in terms of how to vote on this item. Council Member Ibarra told Mr. House that the location had become the issue. The location was close to the neighborhood; the hours at the location that was going on; the time; and all of the extra music and garbage; and people who were coming out of there after a late night of partying. It was his understanding that because it was a person to person transfer, the council would not be allowed to address the location issue. He asked if Mr. House could explain it to the Council.

Michael House, City Attorney, said this was a person to person transfer and under State law the issue was the applicant's capabilities, qualifications and reliability. The protest letter from the Rose Neighborhood Association appeared to address location issues, not qualification issues. So there did not appear to be grounds to turn this application down.

Council Member Ibarra said in terms of the Development Services Department, those issues had already been worked out with City staff, because that was another issue way back when. He asked if that was correct.

Mr. House said that he did not know the answer to that question.

Ms. Detrick explained that she did not hear the question.

Council Member Ibarra asked Ernie Duarte, Development Services Director, if they had worked it out with Valentino's. He knew they had pulled permits and there were some situations going on. He asked if that worked out.

Ernie Duarte, Development Services Director, responded that when this application first originated, there were some issues reported to Development Services about ongoing work that was not permitted. They investigated the work and there was a notice of violation issued. The violation had been abated and a certificate of occupancy had been issued. So the violation issue had been cleared up.

Council Member Ibarra said although he hated it, because it was such a nuisance location to the neighborhood and the neighborhood was very adamant against this location, the fact of the matter was the Mayor and Council could only look at the person to person transfer as provided by state law.

It was moved by Council Member Ibarra, duly seconded, and carried by a voice vote of 6 to 1 (Mayor Walkup dissenting) that liquor license application 5b6, be forwarded to the Arizona State Liquor Board with a recommendation for approval.

6. CONSENT AGENDA ITEMS A THROUGH J

Mayor Walkup announced the reports and recommendations from the City Manager on the Consent Agenda Items would be received into and made a part of the record. He asked the City Clerk to read the Consent Agenda.

- A. ASSURANCE AGREEMENT: (S03-019) DESERT LINKS SUBDIVISION LOTS 1 TO 48 AND COMMON AREAS "A", "B-1" TO "B-3", "C", AND "D-1" TO "D-7"
 - 1. Report from City Manager MAY10-04-220 W2
 - 2. Resolution No. 19823 relating to planning: authorizing the Mayor to execute an Assurance Agreement securing the completion of improvements required in connection with the approval in Case No. S03-019 of a final plat for the Desert Links Subdivision, Lots 1 to 48 and Common Areas "A", "B-1"- "B-3", "C", and "D-1 – D-7"; and declaring an emergency.

B. FINAL PLAT: (S03-019) DESERT LINKS SUBDIVISION LOTS 1 TO 48 AND COMMON AREAS "A", "B-1" TO "B-3", "C", AND "D-1" TO "D-7"

1. Report from City Manager MAY10-04-221 W2
2. The City Manager recommends that, after the approval of the assurance agreement, the Mayor and Council approve the final plat as presented. The applicant is advised that building/occupancy permits were subject to the availability of water/sewer capacity at the time of actual application.

C. ASSURANCE AGREEMENT: (S03-014) DESERT VISTA SUBDIVISION LOTS 1 TO 31 AND COMMON AREAS "A" AND "B"

1. Report from City Manager MAY10-04-225 W1
2. Resolution No. 19824 relating to planning: authorizing the Mayor to execute an Assurance Agreement securing the completion of improvements required in connection with the approval in Case No. S03-014 of a final plat for the Desert Vista Subdivision, Lots 1 to 31 and Common Areas "A" - "B"; and declaring an emergency.

D. FINAL PLAT: (S03-014) DESERT VISTA SUBDIVISION LOTS 1 TO 31 AND COMMON AREAS "A" AND "B"

1. Report from City Manager MAY10-04-219 W1
2. The City Manager recommends that, after the approval of the assurance agreement, the Mayor and Council approve the final plat as presented. The applicant is advised that building/occupancy permits were subject to the availability of water/sewer capacity at the time of actual application.

E. ASSURANCE AGREEMENT: (S02-053) BANTAM ESTATES SUBDIVISION LOTS 1 TO 30 AND COMMON AREAS "A" AND "B"

1. Report from City Manager MAY10-04-226 W5
2. Resolution No. 19825 relating to planning: authorizing the Mayor to execute an Assurance Agreement securing the completion of improvements required in connection with the approval in Case No. S02-053 of a final plat for the Bantam Estates Subdivision, Lots 1 to 30 and Common Areas "A" - "B"; and declaring an emergency.

- F. FINAL PLAT: (S02-053) BANTAM ESTATES SUBDIVISION LOTS 1 TO 30 AND COMMON AREAS "A" AND "B"
1. Report from City Manager MAY10-04-227 W5
 2. The City Manager recommends that, after the approval of the assurance agreement, the Mayor and Council approve the final plat as presented. The applicant is advised that building/occupancy permits were subject to the availability of water/sewer capacity at the time of actual application.
- G. INTERGOVERNMENTAL AGREEMENT: WITH THE TOWN OF ORO VALLEY RELATING TO WATER SERVICE IN THE AREA OF ORACLE ROAD AND MAGEE AND HARDY ROADS
1. Report from City Manager MAY10-04-229 OUTSIDE THE CITY
 2. Resolution No. 19826 relating to water; authorizing and approving the execution of an Intergovernmental Agreement with the Town of Oro Valley relating to current and future water service in the area of Oracle Road and Magee and Hardy Roads (outside the City); and declaring an emergency.
- H. INTERGOVERNMENTAL AGREEMENT: WITH THE AK CHIN INDIAN COMMUNITY FOR CONTRIBUTIONS TO THE ARIZONA STATE MUSEUM
1. Report from City Manager MAY10-04-228 CITY-WIDE
 2. Resolution No. 19827 relating to finance; authorizing and approving the execution of an Intergovernmental Agreement between the City of Tucson and the Ak Chin Indian Community for making contributions to the Arizona State Museum; and declaring an emergency.
- I. INTERGOVERNMENTAL AGREEMENT: WITH PIMA COUNTY FOR THE INCARCERATION OF CITY PRISONERS
1. Report from City Manager MAY10-04-216 CITY-WIDE
 2. Resolution No. 19828 relating to Intergovernmental Agreements; approving and authorizing execution of an Intergovernmental Agreement with Pima County for the incarceration of City Prisoners, FY04-05; and declaring an emergency.

J. MEMORIAL: CONCERNING POSSIBLE REACTIVATION OF THE YUMA DESALTING PLANT

1. Report from City Manager MAY10-04-231 CITY-WIDE & OUTSIDE CITY
2. A Memorial relating to the operation of the Yuma Desalting Plant; urging the United States to take all steps necessary to operate the Yuma Desalting Plant or otherwise ensure that Arizona obtains full credit for its allocation of water from the Colorado River.

Item J was considered separately at the request of Council Member Leal.

Mayor Walkup asked if there was any discussion. There was none.

Mayor Walkup asked the council's pleasure.

Council Member Leal wanted Item I considered separately and asked the City Attorney to advise whether or not he had a conflict of interest concerning pay for jail services.

Michael House, City Attorney, responded that under state law the conflict of interest statute had an exception for a public official who was employed by another public agency. So in other words, if the only interest was the employment by the public agency involved, then there would be no conflict of interest.

Council Member Leal said in that case, he would not ask that the item be considered separately.

It was moved by Council Member West, duly seconded, that Consent Agenda Items A through I, be passed and adopted and the proper action taken.

Mayor Walkup asked if there was any discussion. There was none.

Upon roll call, the results were:

Aye: Council Members Ibarra, West, Dunbar, Scott, and Leal;
Vice Mayor Ronstadt and Mayor Walkup.

Nay: None

Consent Agenda Items A through I, were declared passed and adopted by a roll call vote of 7 to 0.

J. MEMORIAL: CONCERNING POSSIBLE REACTIVATION OF THE YUMA DESALTING PLANT

Mayor Walkup asked the council's pleasure.

Council Member Leal said he would explain his position on this item and then the Council could vote on it. He thought the Council had a good discussion on this item. He would not be supporting the particular language on this, but he had no qualms regarding his colleagues doing it. He said he would be sending his own letter to the individuals and agencies that were listed as being the recipients of this memorial. He also had strong concerns and wanted to do his part to protect water allocation and the City's ability to deliver water to their constituents in the community in the future.

Mayor Walkup recognized Council Member West.

Council Member West said that she would just like to read the title in the memorial "relating to the operation of the Yuma Desalting Plant; urging the United States to take all steps necessary to operate the Yuma Desalting Plant or otherwise ensure that Arizona obtains full credit for its allocation of water from the Colorado River."

It was moved by Council Member West, duly seconded, that Consent Agenda Item J, be passed and adopted and the proper action taken.

Mayor Walkup asked if there was any discussion. There was none.

Upon roll call, the results were:

Aye: Council Members West, Dunbar, Vice Mayor Ronstadt and Mayor Walkup

Nay: Council Members Ibarra, Scott, and Leal

Consent Agenda Item J was declared passed and adopted by a roll call vote of 4 to 3.

7. CALL TO THE AUDIENCE

Mayor Walkup announced this was the time any member of the public was allowed to address the Mayor and Council on any issue except for any items scheduled for a public hearing. Speakers would be limited to three-minute presentations. He said there were a number of requests to speak and called on the first speaker.

- a. Kirk Saunders, representing the Manufactured Housing Community of Arizona, opposed the rental tax and the garbage tax.
- b. Jessica Phillips supported the preservation of the "Talk of the Town" building.
- c. Bud Seamon opposed the rental tax.

- d. David Martin supported the preservation of the “Talk of the Town” building.
- e. Sherie Steele, representing the Community Food Bank, thanked the Mayor and Council for their earlier decision regarding funding of Social Service agencies, particularly the support for the Community Food Bank.
- f. Linda Bohlke, representing the American Federation of State, County, and Municipal Employees (AFSCME), thanked the Mayor and Council for their earlier decision regarding funding of social service agencies, particularly the Brewster Center, and spoke in opposition to any outsourcing.
- g. Erica Kreider supported the preservation of the “Talk of the Town” building and requested any action be delayed until the Historical Society could finish their review of the property.
- h. Allan Leibensperger supported the preservation of the “Talk of the Town” building.
- i. Roy Martin supported the preservation of the “Talk of the Town” building.
- j. Scott Morgan opposed condoms in boys’ restrooms in City parks.
- k. Winston Watson supported the preservation of the “Talk of the Town” building.
- l. Gretchen Lueck supported the preservation of the “Talk of the Town” building.
- m. Rita Magdaleno, representing the Tucson-Pima Arts Council (TPAC), Voices and Arts Reach, urged the Mayor and Council not to divert funding of arts programs to balance the budget.

Mayor Walkup announced the Council was moving out of sequence and would consider Item 11 next. For those in the audience who had submitted cards and were not called on, and if they planned to be there next week, he would make sure that he called on them first next week.

11. CITY ATTORNEY: APPOINTMENT OF THE CITY ATTORNEY (taken out of order)

Mayor Walkup announced City Manager’s communication number 233, dated May 10, 2004, would be received into and made a part of the record. He asked the City Clerk to read Ordinance 9961 by number and title only.

Ordinance 9961, relating to the City Attorney; appointing the City Attorney; and declaring an emergency.

Mayor Walkup asked the council’s pleasure.

Vice Mayor Ronstadt said he was incredibly honored to make this motion and he was incredibly honored to vote for this motion. But in respect for one of his colleagues who he thought was ultimately responsible for getting this person to apply, he was passing this to Council Member Dunbar.

Council Member Dunbar thanked Vice Mayor Ronstadt.

It was moved by Council Member Dunbar, duly seconded, that Ordinance 9961, be passed and adopted, appointing Michael Rankin as the City Attorney.

Kathleen S. Detrick, City Clerk, explained that the attachment to the ordinance was the agreement with Mr. Rankin.

Mayor Walkup asked if there was any discussion or commentaries.

Council Member Scott congratulated Mr. Rankin and said the council looked forward to working with him. She knew that he would have a long and successful career in this department. She also took the opportunity to personally thank Michael House, the current City Attorney. Mr. House would be leaving this community and would be missed. He had served the City very well and she wanted to thank him.

Council Member Dunbar thanked the commissioners who worked on the selection process. There were excellent candidates and it was a tough decision. They were confident that the right decision was made.

Council Member Leal said he agreed with Council Member Dunbar.

Council Member West thanked Mr. Rankin and that he was known in Ward 2 as the junk yard dog, because he was a tough attorney. She thought he would carry that over now as he led the City as the top attorney. They were proud to have someone who had lived in this community for most of his life be their City Attorney. At the same time, she wanted to bid not goodbye, but wanted to say to the present City Attorney that he was of sterling quality. She thought the fact that Mr. Rankin had worked with him over the last three and a half years was something that would come into play very well in his tenure as the City Attorney.

Mr. House thanked them for all of their support. He said it had been great and he was very sad to leave. He congratulated Mike Rankin and said that he would be a great City Attorney.

Vice Mayor Ronstadt also wanted to thank Mr. House. When they went out for a search for a new City Attorney a few years back, in his mind he had an idea of what a model City Attorney might be and Michael fit the bill across the board. He also told Mr. Rankin that today, and the day that he leaves the job, would be the only days that he would get accolades from this body.

Council Member Ibarra thanked Mr. House again for being a great attorney, a good advisor, and always being fair and honest. He also congratulated Mr. Rankin and asked that he be allowed to come up and say a few words if that was okay.

Mayor Walkup said his suggestion was that they wait until a vote because one was never quite sure what this group was going to do even though he could predict it. Upon the conclusion of the vote, he would invite him up there. Also, he said that Mr. House was an absolute credit to his profession and it had been a wonderful four years and for the citizens of the City of Tucson. There were four wonderful candidates to draw on. There was a citizens committee to do the interviewing. It was broken down to four of the best and the council had a chance to interview those four. There were some wonderful people that were interviewed and they were unanimous in their vote.

He asked for the roll call on the motion to pass and adopt Ordinance 9961 appointing Mike Rankin as the City Attorney.

Upon roll call, the results were:

Aye: Council Members Ibarra, West, Dunbar, Scott, and Leal;
Vice Mayor Ronstadt and Mayor Walkup.

Nay: None

Ordinance 9961, appointing Mike Rankin as the City Attorney, was declared passed and adopted by a roll call vote of 7 to 0.

Mayor Walkup introduced the new City Attorney, Michael Rankin.

Mr. Rankin said he thought he was the one who was supposed to stand up for them. He knew that they had a lot of business left to attend to and he just wanted to say thank you, and thank you for the appointment and the chance to serve the City as the City Attorney. He wanted to take a moment to thank Mr. House, who had been extremely gracious with his time and advice, particularly in the last couple of weeks, as they had gone through the selection process. He wanted to acknowledge his family and friends, who were present, including his parents. He sometimes thought they had been more anxious during this selection process than even he was. He thanked them all again and he said he looked forward to working with all of them.

8. PUBLIC HEARING: ZONING (C9-04-01) KEMMERLY – FIRST AVENUE, SH, MH-1 AND C-2 TO R-3 AND C-1 ZONING, CITY MANAGER’S REPORT

Mayor Walkup announced City Manager’s communication number 222, dated May 10, 2004, would be received into and made a part of the record. He also announced this was the time and place legally advertised for a public hearing with respect to a request to rezone property located between Stone Avenue and First Avenue on the north

side of the Rillito River. The Zoning Examiner and the City Manager recommended approval subject to certain conditions.

Mayor Walkup asked if the applicant or a representative was present and if they would like to make a brief comment.

Bob Storie said he worked for Chris Kemmerly, the Kemmerly Companies and Miramonte Homes, which was located across the street from this property.

Mayor Walkup asked if he they were aware of and agreeable to the proposed conditions.

Mr. Storie said that they had reviewed all of the conditions and found them all acceptable except for one typo on number seven, which referred to a “one” when it should be a “two”-story, and he asked that they confirm that with staff. He believed that was a condition on all prior discussions and the meeting with the Zoning Examiner, as well.

Mayor Walkup replied very well.

Ernie Duarte, Development Services Director, said that they had a conversation this afternoon with the representatives of the Kemmerly Companies and condition number seven, which dealt with height restrictions along the northern boundaries, should in fact be restricted to two-story as opposed to the one that was written.

James Keene, City Manager, asked if that was in agreement with the point that staff had just made.

Mr. Storie said other than that, everything was perfect.

Mayor Walkup recognized Council Member Dunbar.

Council Member Dunbar asked if they were going to give a brief presentation. She said she did not think that anyone on the council had seen what was proposed to go in. She asked for a very brief presentation.

Mr. Storie said Chris Kemmerly was also present and could add additional information that would be needed. Mr. Storie proceeded to give a power point presentation. He showed that the site was on a linear park just north of the River, across from Sam’s Club. It ran from Stone clear across to First Avenue. It had a very narrow opening onto First Avenue; on First Avenue itself. Both ends of the property would be gated. The offices were immediately to the right just below the racetrack.

Mr. Storie noted that over the years many different proposals had been made for this property, but he thought it was the only one that actually offered detached housing on the entire property. The density was much greater on prior applications. It was a very

small lot, one hundred eighty seven homes as described, which was constructed with new urbanism, great for infill projects in the City. They had a small component on the southwest corner. As you crossed the river on Stone, there was a small commercial property that would support commercial for the neighborhood. It would be accessible from Stone Avenue, but it was also there for anyone that happened to be using the linear park. They received a lot of support for that particular effort because it would be the only vertical starter on the linear park, and it would go in first on the park and it would be a stopping place along the way. It would enhance the linear park and its presence in the City. It was gated at both ends. It would not encourage any true traffic on the property itself and it was surrounded, except for the north end. The neighbors in North Manor had been very supportive.

Council Member Dunbar asked Mr. Storie if he had a copy of exactly what it was going to look like.

Mr. Storie replied in the affirmative.

Council Member Dunbar asked if, while they were putting it on the screen, he could explain the market survey that was done prior to this development.

Mr. Storie explained that when he first joined Mr. Kemmerly about ten months ago, he told him that he was spending so much money on this property that he better find out who he was going to be selling it to. He agreed and they hired a very accredited demographer that had been doing it for about twenty-five years across the county for various size builders. He came to Tucson and conducted a study session that lasted three days. Then he did surveys from the five zip codes in the area. Some criteria included people who had bought houses in the last two years for \$150,000 to \$300,000 and some other variables similar to that. They found that the response was very high. It was more than the average response. In fact, it was twenty-three percent, which in survey terms was very high. The answers were very skewed one way or the other. In the survey the renderings were included, so they were given a sense of what was proposed for the neighborhood.

Mr. Storie said that what came back was very strong and he was very adamant about being able to draw conclusions because the information was so strong in one direction. He said he included a letter for distribution that the demographer wrote, responding to a recent letter from representatives from Amphi School District about this property. He found, as the Council might expect, that in an infill location like this, it really appealed to those people that liked to enjoy the amenities of the city. It included a linear park, shopping that was adjacent, and a hospital that was just up the street; all of the facilities that you would have at the university and downtown, the restaurants and of course everything that was in the City itself. He said he lived in the City and he appreciated being close to a lot of different things.

Mr. Storie concluded by stating that the prime customers for this project were going to be single women, who both he and Mr. Kemmerly had sold to in the past and

they had a good experience with that group. These were not teenagers but women in their thirties, forties, and fifties who were working and maintaining themselves quite well and wanted a nice place to live. The security of the gate was a factor as well. Working couples and that would be split, young working couples before they really started families, and older couples in their forties and fifties, up into their sixties, that were still working and wanted to enjoy the City. This was not a large, expansive area and people more willing to enjoy the benefits of the foothills. This was an in town, small lot, know your neighbors, pedestrian-oriented walk down to the coffee shop and little retail center that they were going to be building, and enjoy the linear park. He thought they were going to have a lot of health nuts that were going to want to roller blade and jog up and down that linear park.

Council Member Dunbar thanked Mr. Storie.

Mayor Walkup announced that the public hearing was scheduled to last for no more than one hour. Speakers would be limited to five-minute presentations and he had received a number of cards. He asked that speakers come forward when he called their name and make their presentation, state their name, address, whether or not they live in the City, whom they were representing and whether or not they were a paid speaker.

Todd Jaeger, Associate Superintendent and General Council for the Amphitheater Public School District, said they operate a number of schools within the City limits. He was there on behalf of the district and he was happy to say he was being compensated for doing so.

Mr. Jaeger appreciated the opportunity to address the Mayor and Council. He knew the Mayor and Council found it increasingly difficult to financially do their work. In general, the government was called upon to do more when government had less resources available to do what was asked of them. He suggested to the Mayor and Council that Arizona school districts were particularly subject to this dilemma and that they were because their authority, and consequently their ability to respond to public needs, was substantially limited in many respects. Their ability to respond to the public need for classroom space, that was the physical room required to educate children, was the reason he was there. To put it plainly, they could not build schools when and where they were needed, as they did in the past, simply by seeking voter approval for bonds. Now the State School Facility Board controls such issues by deciding when they could build schools, how much a school would cost, and if a school in a given neighborhood becomes overcrowded due to infill construction. Then the school facilities board requires that they first adjust their boundaries, or bus students to schools having capacity, before they were permitted to construct new schools. Consequently they were approaching the development community, and had for the last two years, seeking direct development support of new school construction. Such support enabled the district to serve the public interest and the public need for neighborhood schools on a neighborhood level without regard to the State School Facilities and Board funding.

Mr. Jaeger was at the meeting on this particular project because the United States census formulas, and not withstanding the research the developer did, they knew by the census standards that this project would result in approximately eighty-four students on an elementary level, forty-nine students on the middle school level, and nineteen students at the high school level. These figures did not mean much until they put them in context to the current enrollment levels at schools that would serve this particular development. The Amphi Middle School presently had an enrollment of eight hundred sixty-four and its capacity was nine hundred. Rio Vista Elementary could expect eighty-four students with a current enrollment of six hundred sixty-five and it had a capacity of eight hundred. As the Mayor and Council could see they were nearing a point at each of these schools where they would immediately exceed through this development their physical capacity. They approached the developer consequently to express their concern. Initially, the developer was uninterested in entering into a development agreement, which they had done throughout the district in a number of other circumstances. They then opposed this project, after which the developer contacted them and indicated their willingness to enter into negotiations. Ultimately, on or about April 21, they received the final word, after exchanging drafts of the agreement, that the developer would in fact enter into an agreement with the district providing \$1,200 per home. That would essentially allow them to build four classrooms at either of the schools and allowing them to overcome the capacity deficiency.

Mr. Jaeger said that the council might wonder why they were there. They were there because the developer, just a few days later, contacted them and told them that after having reached an agreement they were withdrawing from that agreement. They said, quite candidly, that they were withdrawing from the agreement because Council Member Dunbar told them that, if they entered into an agreement, she would see to it that this development was voted down. He had his own conversation with Council Member Dunbar on or about April 21 and she told him that she would fight them on this project. He could not understand for the life of him why she would oppose a voluntary agreement that would benefit students at two Title 1 schools, but that was the status. They were asking that this applicant be denied, at this time, until the district's serious concerns about capacity were addressed.

Paul Masmon, who resides outside of the City and is chairman of their neighborhood association, had not planned on speaking at the meeting because they thought they were in complete agreement with the developer. However, the situation about number seven with the single and two-story houses on the north edge of the proposed development had blind-sided them. From all of the information up to this point from the Zoning Examiner's office, the hearing and the meetings they had with the developer, it was their understanding that they would have one-story homes adjacent to the North Manor Subdivision and then ramping up from there. They would not approve or agree with two-story homes adjacent to the neighborhood looking into peoples homes and that had not been their understanding. It would be hard for him to tell the people that live along there that it would be approved with two-story homes. He thanked the council.

Mayor Walkup asked if Herb Sauber was in the audience. There was no response, he asked if anyone else wished to speak on this subject, at this time. Hearing no one, he asked for a motion to close the public hearing.

It was moved by Council Member Ronstadt, duly seconded, and carried by a voice vote of 7 to 0, to close the public hearing.

Mayor Walkup recognized Council Member Dunbar.

Council Member Dunbar said that in response to the comments made by the attorney for Amphi, she wanted to point out that this property was already zoned for manufactured housing. It was zoned for two hundred twenty to two hundred twenty-five units. She explained that this was a rezoning and it had actually gone down from the two hundred twenty to a maximum of one hundred eighty-five; so it was forty houses less than the zoning that was in place now.

Addressing the comments as to who did what, Council Member Dunbar responded that letters were sent to her office and conversations were in response to the letters. A gentlemen came up and addressed the two-story versus the one-story and she asked if the council could see the map and clarify exactly where it went from the one-story to the two-story, the maximum.

Council Member Leal asked them to speak into the microphone.

Mayor Walkup said they wanted to hear the discussion.

Mr. Masmon explained he was talking about the first row next to the subdivision.

Mr. Storie asked if he was referring to the one next to the street.

Mr. Masmon had not thought about the street. The preliminary report from the Zoning Examiner listed one-story lots adjacent to the neighborhood.

Council Member Dunbar explained it could not be a conversation between the two of them, and asked if he could point and Chris could explain what he was talking about.

Mr. Storie explained there was a little confusion because there were some lots that were directly contiguous to North Manor, all the lots on the north side of the parcel. A lot of those contained a row between North Manor, their alley and their lots, so he thought Mr. Masmon was talking about the lots directly on the property line.

Mr. Storie pointed out on the screen that they were talking about lots directly contiguous to the North Manor Subdivision. He thought they did not have an issue with the one-story, but if they were to limit all of lots on the north side to one-story, including those where North Manor had an alley and they had a buffer street, that limited their

choices. They had one to three-story houses and limiting that many lots to one-story, with one-story being the prototypical house for the single women, which was their main buyer profile, would have been an issue. The lots were directly contiguous being one-story and they would not be an issue.

Council Member Dunbar asked Mr. Keene if there was a way.

James Keene, City Manager, wondered if they went to the clarified condition that spoke to the second story and enumerated those specific lots that were identified as having to remain as one-story, that would seem to satisfy the concern that was there. He asked if they could get those lots specifically enumerated before the council acted on this and said Mr. Kemmerly needed to identify what those lots were.

Mr. Kemmerly agreed to do so.

Mr. Keene asked what those lots were, and then they could be included in the clarified conditions.

Mr. Kemmerly said that he wanted to make sure that Paul was fine with it.

Mayor Walkup suggested, due to the amount of business in front of the council, if this was something that could be done after the next item.

Council Member Dunbar agreed that this could be brought back after the next item.

Mr. Kemmerly replied that would be fine.

Council Member Dunbar said it could be brought back and then other comments could be taken and then they could work out the motion.

Mayor Walkup replied that there was a lot of work to do.

Several spoke at once.

Council Member Dunbar said that if it was agreeable with Mr. Kemmerly and the neighborhood president, then the council would come back with a motion.

Mayor Walkup recognized Council Member West.

Council Member West thought it was important for the Council not to get in the middle of Amphi School's capacity issues. That was something that the State and Mr. Kemmerly would have to work out if they were willing. One thing that should be included in the Mayor and Council's legislative agenda, after the Council had done further study on this issue, was to ask the Governor and the legislature to look at the School Facilities Board and see if a School Facilities Board was really needed. Or,

should the Mayor and Council restore local control. She did not believe that they did much to enhance education for Arizona's children. She asked that a note be made to include this in the legislative agenda. This would go a long way towards solving a lot of problems for a lot of school districts.

Mayor Walkup said, with Council Member Dunbar's concurrence, they would delay this item until the Council had completed Item 9.

Mr. Keene asked the Council if that was the only item that seemed to be an issue.

Council Member Dunbar replied she had eight letters of support from the other neighborhoods.

Mr. Keene thanked Council Member Dunbar.

Council Member Dunbar said that this project was being enthusiastically endorsed by the neighborhoods.

Mayor Walkup said that they would leave this item open and the council would move to Item 9.

9. PUBLIC HEARING: RECOMMENDED CIVIC EVENTS PROCESS AND FUNDING FOR FISCAL YEAR 2005

Mayor Walkup announced City Manager's communication number 230, dated May 10, 2004, would be received into and made a part of the record. He also announced this was the time and place legally advertised for a public hearing on the civic events process and funding for fiscal year 2005. He announced the public hearing was scheduled to last for no more than one hour and speakers were limited to five-minute presentations. He said he was just handed a large stack of cards for people that were interested in speaking, so even though the rules said five-minutes he suggested that they limit their comments to three-minutes, or there about, then more people could speak on this very important issue. He asked that people come forward when their names were called for their presentation and to state their name, address, whether or not they lived in the city, and who they were representing and whether or not they were being paid.

Betty Liggins, was not a paid speaker and was representing the Juneteenth Event Celebration. The Juneteenth Event Celebration was left off the funding list in 2005 and she wanted to reiterate the importance of Juneteenth. She showed a document that she purchased several years ago in Washington, D.C. It was a copy of the proclamation that was written by Abraham Lincoln that was now called the *Proclamation of Emancipation*.

Ms. Liggins added that this document was not just for African Americans. It changed the way America looked at people. This document was important to her for her grandfather was the product of a slave and a slave master and her grandmother was a Seminole Indian. Juneteenth was not just a Tucson thing. It was going across the

country because of the fact that this document, although it was signed in 1862 and it took effect January 1, 1863, the message did not get to the West until two and a half years later. That was why Juneteenth was celebrated. For two and a half years there were still people of slavery although Abraham Lincoln had signed the proclamation, and it was working its way across the country. It was not just for African Americans, but the whole country could see the things that had happened years ago that should never be forgotten, so that things like this would never happen again. Ms. Liggins asked that the Mayor and Council continue the funding for Juneteenth, and she was sure that they would not regret it. It was something that was needed in this community and it was going across the country. She thanked the Mayor and Council.

Jim Griffith was not being paid to speak. He was representing a number of small ethnic festivals, which were currently on the list for City funding cuts. The nine festivals that had been chosen for continued funding were all worthy events. They all seemed to share one or more character, many brought tourist dollars to the City. All reflected Tucson's mainstream culture. All were basically public spectacles, be they sports events, parades, or fireworks displays. There was nothing wrong with any of this. Of course, all of these events deserved to continue. He was sure they would continue even if their funding were to be cut. They were well known enough, popular enough, visible enough, that private underwriters would be found. Mr. Griffith noted that regarding the events being cut, the remaining forty-five that were left out in the outer darkness, wailing, and gnashing their teeth. Some like the "dieciséis de septiembre", Cinco de Mayo, and the Norteño Festival, were due to their nature. He said he could not speak to all of the rest, but some he knew fairly well. The cultural arts events, like Juneteenth, the Waila Festival, Tucson Meet Yourself, the San Augustine Feista, Tucson Folk Festival, and the Old Time Fiddlers Contest, most were put on by a relatively small number of dedicated volunteers.

Mr. Griffith said that many spoke to the interest of a relatively small group within the community, but together they said much about the kind of community Tucson really was. He had been told that the real issues were not financial, but involved controlling the proliferating events and worthiness. So, it was on those topics that he wished to address the Mayor and Council. He focused his remarks on the event he knew best, Tucson Meet Yourself. He asked of the many that were in attendance how many were involved with or attended that festival. He said he would not even look around, but he bet there were a few.

Tucson Meet Yourself was an educational event put on entirely by a volunteer staff. No admission was charged but it was considered a point of ethics to pay the performers and demonstrators. They showcased the living traditional arts of the folk and Ethnic communities of Southern Arizona. It was an invitational event and the standards were high. The events were fun and entertaining, because if it were not, people would not come. Its real purpose was to respectfully point out the beauty and complexity of Southern Arizona's multicultural society. That was all they tried to do and all they had done for thirty years. For some of those years, it was a year-round job. They did it as volunteers, because they believed in it and loved it. They firmly believed that their

efforts had defused a lot of tension and continue to make Tucson a better place in which to live.

Mr. Griffith added that although they got support from City workers, it sometimes appeared their efforts were not considered important by some City policy makers. They did not receive cash from the City of Tucson. They got about six thousand dollars in waived facility fees. They were told after thirty years, they should be self-supporting and they were close to being that. Last year they raised twenty thousand dollars of new money after the estimated fifty thousand dollar expenses. But by this standard how about the Rodeo Parade, which began in the 1920's and the Winterhaven Festival which began in the 1950's? They were on the keeper's list, and the others were not. He was sure there were fine reasons for this, but he hoped that they did not concern social class.

Last year each of the vendor's booths were levied a vendors fee of sixty dollars per day and making it one hundred eighty dollars for the three day event, up from thirty dollars three or four years ago. The Parks Department collects the money and they told them that it followed a decision made by Mayor and Council. They had been lobbying Mayor and Council for over a year on this matter and had gotten little in the way of interest. The Police Department decided how many policemen they needed and on what terms they must hire. This was a trouble-free family event at which no alcohol had been served. There were usually five policemen chatting with each other in the middle of the park, some of them receiving overtime. Last year they paid over four thousand dollars for this protection. Mr. Griffith said the Council should not worry; there would be a Tucson Meet Yourself this year. They had a good track record and after thirty years, some people in executive positions had begun to hear of them. But like the other events he mentioned, there was no social status in supporting Tucson Meet Yourself. Nobody was going to gain status through being on their board. That, combined with the fact that they performed an important service for the community, might explain the need to keep asking for and needing city assistance. He thanked the Council.

Daniel Forrest, said he is a county resident and was representing Tucson Meet Yourself as a volunteer coordinator. He shared his personal history and experience with Tucson Meet Yourself and pointed out how Tucson Meet Yourself and the City of Tucson had the same goals. His first job was fourteen years ago, when he brought a group of six graders down to give a Kid Lore Workshop on a Saturday. He was very pleased to see two of those kids at the festival. They were both in their mid-twenties; one was there with his wife and kids and told him he had a great job and he really liked bringing the family to the festival. The other student that was there said she remembered when she was eleven and how immature she was, and how she thought what a boring field trip it was. Now, as an adult she really appreciated the festival and being able to enjoy her culture. Mr. Forrest said the worst job in his fourteen years with Tucson Meet Yourself was last year, going to the thirty non-profits that were selling food, and telling them they owed one hundred eighty dollars for vendors fees that gave them permission to sell food.

Next, Mr. Forrest addressed going to the City of Tucson website, where there was a section called “Five Trends for Tucson”, “Going, going, gone Tucson”, or “Building From the Best of Tucson”. One of the statements was that the City outwardly reflected the beauty of the surrounding desert and the history, cultural and qualities that made Tucson uniquely the Old Pueblo, and he contended that Tucson Meet Yourself was one of the qualities that made them the Old Pueblo. He said some of the presentations that they had such as Waila music, and Pascua Yaqui Deer Dancing were uniquely Tucson. There was another section that said the Livable Tucson Vision Program had seventeen goals. One of the goals was the preservation and celebration of culture and traditions that made Tucson unique. It almost sounded like their mission statement and it was what they were trying to do.

Another goal was the promotion and development of the cultural aspects of the city center. It brought a lot of people downtown. If one scrolled down a little it said, “what you can do” and it said attend cultural events located in the downtown area, which sounded like a perfect match. Tucson Meet Yourself could help the City of Tucson reach its goals and they brought revenue into the City. They had the festival in the heart of downtown; they did not hire consultants from Nevada. They only paid people from Southern Arizona to perform and they did this for tens of thousands of people. He asked the council to please help them make Tucson a better place.

Johnny Bowens, said he was not a paid speaker and he was representing the Juneteenth Festival. He did not have an opportunity to sit down and write a statement, but wanted to speak from the heart. It was ironic, but he would also like to support the comments made by Betty Liggins and Big Jim Griffith, in terms of how the events were viewed. Tucson prides itself on being a multicultural community. It prides itself on being a diverse community; but when it comes in contact or in competition with the budget, then it gets the back seat. It was also ironic that the dollar allocation of various organizations that were funded last year for civic events was approximately five hundred thousand dollars. In comparison to the overall City budget that was being proposed, one billion dollars, the sort of attention that City Council Members and the State were giving to this minuscule budget escaped him.

Mr. Bowens said it also escaped him that when they looked at the five hundred thousand dollar budget that was being recommended for this year, the majority of that budget was not a direct allocation to the various organizations, but was a charge back to other City departments. He thought that needed to be looked at in its context. Juneteenth received about twenty thousand, and about three thousand of that was given to outside vendors. The majority was given to other City departments to provide services that they were already being paid to do. There was no additional equipment being purchased by City departments. There was no additional City staff that was being hired to do the services that they were already contracted for. He thought they needed to look at more creative accounting and what was being talked about was not direct appropriations, but supporting of other City departments with that five hundred thousand dollars. Juneteenth had been a fixture in this community for thirty-four years and it would be difficult to provide independent funding if Juneteenth was not funded for the year 2005. He urged

and encouraged the Council to not only fund the Juneteenth celebration, but to restore the five hundred thousand dollars funding to the other organizations as well.

Charles Hudson, representing American Legion Post Number 7, was not being paid to speak. He was the past Commander and Chairman of the Veterans Day Parade, which was in its eighty-fourth year. They were on the list of organizations the Council proposed to fund. This amounted to one thousand eight hundred seventy-five dollars. It included eight hundred seventy-five dollars to Parks and Recreation for the reviewing stage and one bleacher, which was provided for the veterans who were patients of the V.A. Hospital, to witness the parade. Another item was the barricades that previously came out of the Police Department's budget. Last year and from then on, they were asked for fee waivers. They received no money, but they liked what they got. This was in addition to the excellent police traffic control that they received. He asked that Mayor and Council favorably consider them for the total funding of one thousand eight hundred seventy-five dollars.

Mary Apitz, lived within the City limits and was representing the Arizona Association of Manufactured Housing. She wanted to thank the Mayor and Council for providing their one-fourth mile of Pantano Road with a nice fat overlay of tar. They waited about fifteen years for it to happen. She and her friends enjoyed the City, she loved this town and she had lived here twenty-five years. She came from Minnesota, which was the epitome of diversity. The "Taste of Tucson" and all of the other things they were talking about were what made Tucson an enjoyable place to live. However, she questioned nibbling away at budgets for people of those enjoyable events and then putting on a rental tax and additional garbage expense.

Ms. Apitz represented the Association of Manufactured Homeowners, individuals who owned their own homes, but they rented the land that their homes were on. These people were not necessarily in her park; but in many of the parks there were low-income groups of people. Since the garbage issue was published she had been approached by desperate little old ladies saying that they did not know what they were going to do if they had to pay another twelve dollars per month to pay for garbage collection. Not only that, they did not have that much garbage in the first place. They did not want to have it collected every week. They would end up being very frightened and very unsure of what was going to happen to them. The people most likely to cope with these additional taxes would have to decide between food and rent, and they would find it difficult to face these additional fees. She wished the Mayor and Council would think about that when they go through the budget.

Ms. Apitz asked Mayor and Council to look at some of the things that could be cut. She supported community events for many years and she was considered the queen of the volunteers in her group of people. She did not know what the word no meant. One of the things that they as a group of people coming into the city from out-of-state really enjoyed about this City was that it had many cultural things happening. The cost was going to be paid for by the people who were worrying about getting their garbage picked up; it just did not seem to balance out as far as she was concerned.

Audra Koerber said she was not being paid to be a speaker, but she was representing an all volunteer, community, non-profit orchestra called the Civic Orchestra of Tucson. Next year they would celebrate their thirty-five-year anniversary of providing free symphonic orchestra concerts to the Tucson area. They provided five free programs each year of which one was their Pops in the Park Concert in Reid Park. Last Sunday was their twenty-eighth concert in Reid Park. For the past several years they have preceded their Pops in the Park Concert with an instrument petting zoo before the show, where children had the opportunity to handle and play with child-size symphonic instruments from the orchestra.

For twenty-eight years the City of Tucson had sponsored their Pops in the Park Concert and had waived their civic event fees. This year those fees totaled one thousand dollars. In addition, the City had also paid their orchestra three hundred fifty dollars as a thank you for putting on the concert. Their orchestra had an annual budget of fifteen thousand dollars. All of their concerts, including Pops in the Park, were free and they depended heavily on donations from audience members and community businesses to maintain the tradition of free concerts. They could take the cut of the three hundred fifty dollars of thank you from the City.

The civic fees for the Pops in the Park Concert alone were ten percent of their annual budget and that was a cost they could not absorb. Next year if these cuts were approved, for the first time in twenty-nine years they would not be able to play in Reid Park. It could not be said that they impacted the largest number of citizens, but they did impact many citizens who would otherwise be unable to attend a symphony concert for financial reasons. She urged the Mayor, City Manager, and the Council Members to consider broadening their focus to include the civic events whose monetary requirements were so small but whose contributions were so great. One thousand one hundred dollars seemed like a small amount to pay for a nearly thirty-year Tucson tradition.

Roger Wright, who lives in the County but works for the City, was representing the American Cancer Society and was not being paid to speak. He was in front of the Council from about three different platforms. He was the Chairman of the American Cancer Society's Climb to Conquer Cancer; he was an officer with the Tucson Firefighters Association, which had been the title sponsor for this year's event. In those six years they had donated over ninety thousand dollars to this event. Lastly, and maybe more importantly, he was a cancer survivor and he did not envy the task ahead of the Mayor and Council where they would be determining where they could spend their money to help out which events.

All of the events had their merits and he did not wish to belittle any of them. He presented his reasons for why they believed their event was worthy of the Council's consideration. The next event would be the nineteenth Climb to Conquer Cancer and it had become a quite an annual tradition among many citizens of this community. The last event held at the beginning of March had over two thousand walkers and they raised over one hundred fourteen thousand dollars. The reason they believed this event was

important was basically the same reason that the Tucson Firefighters chose to support it. The money raised from this event could and would benefit people of all ages, races and sexes and it did not matter whether they were rich or poor or somewhere in between; cancer could strike anyone at anytime.

Mr. Wright said this event provided programs such as prevention programs, detection and treatment programs, and patient support programs. In the last year over five thousand people had received services or were able to obtain important information here in Tucson. One of the things they did was to support groups for patients with cancer and their families. They had a program that provided wigs for people when they lost their hair to chemotherapy. He had to admit, as a fifteen-year-old with cancer he did not mind being bald, he thought it was kind of cool. Unfortunately, he did not know the number of hits that they had taken on the web throughout the last year, but it received many hits through the day. In closing, he said as a survivor he could not stress the importance of having an organization like this to go to for support, for information, and assistance when needed. When someone was diagnosed with cancer there were a lot of questions and a lot fears that this organization could help with. Last year the city's expense for this event was two thousand eight hundred. Of that, five hundred was waiving the expense that they used on top of "A"-Mountain. The rest of the money was used to offset the expenses for barricades. Now this amount did not seem like a lot of money, but every dollar they had to pay out of money raised, was a dollar that they could not put back into the community to help with these programs to help these people with cancer. With that in mind he said he would look forward to the council's consideration of this matter.

Angelo Joaquin, Jr., member of the Tohono O'odham Nation, he resided in Ward 2 and was not a paid speaker. He was the Director of the Waila Festival and also one of its founders. The Waila Festival had celebrated, as of two days ago, it's sixteenth Annual Event. It celebrates the social events and music of the Tohono O'odham, or the desert people. Over the years they had nearly one hundred thousand participants at this free event. This past year they received a one thousand six hundred-dollar fee waiver for equipment including stages, booths, and bleachers. They were not recommended for civic event funding and this would cause a major hardship for this event. This event was free, because in the Tohono O'odham culture they did not charge for social events.

Mr. Joaquin said that the Waila was touted by the tourism and travel web site that they could find on the Internet. It showed the cultural richness of this area and there was no other city in the United States that had a Waila Festival. The Waila Festival builds community. In 1934 his father was five years old, that was only seventy years ago and he grew up on the reservation to the west of Tucson. He and other children his age were told by their parents that if they heard a motor vehicle coming down the road to run into the desert and hide and not to come out until they were called for. That was because they did not have cars. But the missionaries did and they were forcibly taking Tohono O'odham children to schools off reservations. Again, this was only seventy years ago. Watching people of various cultures come together at the Waila Festival really showed the cultural richness of this area and it added a whole lot to the quality of life here. Their

creation story tells that the Tohono O'odham was made for the people, or the O'odham. The Waila Festival helped identify the area known as Tucson, or O'odham, with Tucson as their home. He respectfully asked the City to consider funding the Waila Festival.

Magdalena Nowacka-Jannotta, a traditional Polish American folk artist and educator, representing Tucson Meet Yourself. She was good friends with the Tohono O'odham and with the Mexican/American paper cutters and that would have never happened in a big city. This was very vibrant. Ms. Nowacka-Jannotta came to this country some forty years ago and had received great hospitality and generosity from the American people. Ms. Nowacka-Jannotta brought her art with her as a student, a young woman. But over all of those years she was proud to tell the Mayor and Council that in today's curriculum of American schools, on the east side, the west side, and now in the southwest, many American children were doing Polish paper cutting. That was not a Polish joke, but it was a way of expressing her tradition to beautify her home in an easy and cheap way of doing it and was happy to say that was really happening. She also had to tell the Mayor and Council that she had taught in many schools, colleges, the Smithsonian Institute, and the Library of Congress collected her works. Ms. Nowacka-Jannotta had been in Tucson for the last thirteen years and because of the great generosity of the American society, felt like she needed to give something back and this had been the time of her life when she could do that.

Ms. Nowacka-Jannotta wanted to give back her skills and her traditions, and said that Tucson Meet Yourself was an ideal place, an ideal forum to do so. She hoped that she was speaking on behalf of other immigrants who brought their arts and crafts with them. That way they could really share their culture and could give their gifts to all of the people of the Southwest. She hoped that the Mayor and Council would reconsider, help and support Tucson Meet Yourself, so they could participate in that big festivity year by year.

Mercedes Guerrero, thanked the City of Tucson for the past support that had been given to the Comité de Festividades Mexicanas for the Cinco de Mayo and the "dieciseis de septiembre". She also wanted to thank Jim Griffith because he made a very good point for supporting people who were doing the cultural part of Tucson, and to thank the Juneteenth representatives. Because of them, she did not have to say so much, they said just about everything that she wanted to say. The only thing she wanted to add was that like Juneteenth and Tucson Meet Yourself, they represented people from all ages, from all walks of life and it was a tradition. It was said that the groups that were selected to be funded was because of tradition, but she could not think of anything that was more traditional than celebrating Cinco de Mayo and "dieciseis de septiembre". That was a very traditional community event. People would go to Kennedy Park with babies in strollers. Grandmothers would go.

Ms. Guerrero said their group was not asking the Council to fund the fiesta; they were only asking to help them with the expenses that the City and the County provided. She agreed that police protection, traffic control and barricades would be needed; they had to do that. Those were the things that the City, the State, and the County said her

group had to do, which they did. They helped them with that, but not all of it. Even after their group had been told that the fees were going to be raised and more policemen provided, they still had a lot more policemen. They paid for the security themselves, so there were still a lot of big expenses. They were told that they had to have sponsors and they did. The sponsors helped with the high insurance and the entertainment, without which they could not have a fiesta. Therefore, they felt that one way or another they were going to have the fiesta. They knew they were going to do that, but they really needed help from the City because it would concern a lot of people, people of all ages and people from all walks of life. Ms. Guerrero hoped that the Mayor and Council would reconsider helping them, not by giving them money as she had said, but by waiving some of the fees that they had to pay.

Frank Jannotta, said he was not being paid. He was representing only himself and wanted to make a plea for funding and support for the Tucson Meet Yourself festival. He agreed with everything the other speakers said about the festival and he had one observation to make. Here in Tucson there were numerous differing groups and minorities. There were various races, differing language groups and differing ethnic traditions. There were rich, poor, immigrants and native born. Of all those groups now, Tucson Meet Yourself was one event which brought all the differing groups in Tucson together in a way that was not commercial, but which fostered understanding and peace in the community. Because of that unifying and community reinforcing aspect, he thought that Tucson Meet Yourself merited the Mayor and Council support.

Christina Bickelmann was not being paid to speak, at least for this particular presentation. She pointed out that she was the founder and co-chairperson of the Earth Day Festival and parade. It had been ten years now and they primarily raised funds for almost all of it. They did get some fee waivers and barricades; it was about two thousand three hundred dollars. She thought that she spoke for the other small events in saying that they really needed to have the help sometimes for these things and it did not cost money. The City of Tucson was really not giving her group money; they were just giving them help. This particular event was for kids; it was for elementary and middle school kids and it was hands-on activities for kids to learn about the environment. She thought that was really a beneficial thing for the City. There were no events before this event for many years and it was all volunteer committee people who put this on. She just wanted the Mayor and Council to consider that, when making this tough decision. She thought that the previous speakers had pretty much said it all.

Liz Beaver, representing the Tucson Concert Band formerly called Beaver's Tucson Concert Band, said she was not being paid to speak. Tucson Concert Band provided free concerts throughout the year, throughout the City. They looked at themselves as Tucson's own band. They played for the dedication of the underpass and they played for many events out at the Veteran Affairs Hospital. They had played at the ballpark and they played at the rodeo. They liked playing at Reid Park. That was one of their favorite venues. It seemed to cost a little bit of money, as the fees ran two thousand five hundred dollars or more. Their budget did not come near that. The Tucson Concert Band could not afford to cover those fees. They were asking the Mayor and Council to

waive those fees. They were asking the City of Tucson to cover those fees for them so that they could provide good band music for anybody who wanted to come and listen. Their group was about seventy-five volunteers and they enjoyed doing what they did. They loved music; they liked to provide good music for free to all that would like to come. She thanked the Mayor and Council for their consideration.

Richard De Bernardis, founder and Executive Director of El Tour De Tucson, thanked the Mayor and Council for the opportunity to make a presentation. He was at the meeting, not only to beg for funding as he had done for the last twenty one years, but to give the Mayor and Council some information and ask them to consider another direction when they were considering not only El Tour funding but the funding for all those other agencies. In 1984, the City of Tucson first started to fund them and gave them five thousand dollars and did that for twelve years. Then one year they had funding for forty thousand dollars, then for the next ten years they had funding for thirty thousand dollars except for the last couple of years. What the City did, and he hoped that it had thought about that then, was that they were investing in the City's future to bring more revenue. That three hundred forty thousand dollars over the past twenty-two years had yielded the City an economic impact of over one hundred million, just on "ride weekend". During the course of the year, the El Tour yielded anywhere from a one hundred fifty and one hundred sixty million. He said that in looking at the events, maybe the Mayor and Council could look at that as an investment.

The City of Phoenix just invested one hundred thousand dollars for an event called the Rock and Roll Marathon that brought twenty eight thousand people to the City of Phoenix that yielded the City forty million dollars. The City of Tempe just allocated one hundred fifty thousand dollars to an event that was a triathlon that they were going to bring in next April. They were investing there because they said it was going to have an economic impact of 3.5 million dollars. El Tour De Tucson next year would have an approximate economic impact of sixteen million dollars. The Mayor and Council would be kind to make them one of the final nine. He felt badly for that because he did not want to see the other people not being funded. He knew the Mayor and Council did not either. It was a hard decision for the Mayor and Council to make. But in making this decision, he asked that the Mayor and Council look at the event in a different way, not as a special event, but as an investment in the future. The El Tour De Tucson event creates more money so it can give the City of Tucson police a raise, so they could help possibly fund those other events that were in the community.

Mr. DeBernardis once taught psychology at the University of California Los Angeles (UCLA). He also taught educational psychology at the University of Alaska. Now in business he had always been taught, and it was one thing he had learned, that if someone did well, that should be reinforced. Instead of looking on the negative side and cutting an event like El Tour, which was doing so well, maybe all of them who did well should be reinforced so that they could help others.

As founder and director, he came to this community to develop an event, not just a bicycling event, but an event that had been an investment in health and had given multi-

millions of dollars of publicity throughout the world. At the Tour De France, the greatest race in the world, they talked about the El Tour De Tucson. His group was creating another event for the City this year, bringing the first pro race. They hoped that economic impact would increase their income by four million dollars. In three years, if this event worked, El Tour De Tucson would have an economic impact during that one week of fifty-six million dollars. El Tour De Tucson was doing well for the Tucson community, as were the other events. They hoped that they could raise the City of Tucson enough money so that it could fund those other events. He thanked the Mayor and Council for listening and he thanked Rose for all the work she had done. He said that Tucson's police were the greatest police in the nation. Other police agencies in the country were taking example from the Tucson Police Department. He thanked the Mayor and Council.

Dan Davis, was not a paid speaker, but he was at the meeting to talk about the Tucson Folk Festival. He thought that just about everything that could be said about all those worthy festivals that were having their funds cut had already been said. The Folk Festival gets something under five thousand dollars from the City to put it on and most of that goes to police, security, and putting up the bleachers. It was put on by dozens of volunteers. There would be about a hundred musicians who would play for free. They come regionally from mostly out of the Southwest, California, and those kinds of places. They come; they stay at the Radisson and spend money. He was not talking about millions of dollars here, but the Folk Festival definitely brought money into Tucson. They have been holding this festival for nineteen years. This was the main thing that the Tucson Kitchen Musicians did during the year; they put on the Folk Festival.

Mr. Davis said the festival had a reputation, it was a free festival. They could not come up with the money to pay for the security and everything by putting on a free festival, and since it was downtown, it would be helping to bring thousands of people every year downtown for a good community event. Mr. Davis thought it just made sense that the amount, for not just this festival but for Tucson Meet Yourself and all the others. The amount of money that was being saved by canceling them would be self-defeating. The amount of interest in the town, the amount of promotion of the town that would come from all of these festivals would be so much greater than the four thousand or the one thousand or however much everybody would get. It just made sense to maintain the festivals and figure out another way to come up with a few thousand dollars to pay for them.

Jerry Bowen was there to talk about the Tucson Fire Fighters Chili Cook-Off. It had been something that has been going on for nine years and last year they received approximately nine hundred dollars from the City in waivers. One of the things that Mr. Bowen thought the City could do to help the small festivals was to check the rates that the City charged for some of the events. Last year, the fire fighters asked for a large sound system and they were quoted approximately two thousand three hundred dollars from the City of Tucson. He acquired a sound system from Phoenix for one thousand seven hundred dollars. That person came down and was at the El Presidio site at approximately 5:30 a.m. and stayed until approximately midnight.

When the fire fighters were talking to special events they were told there was the expense of those people who had worked from eight to five already and overtime would be incurred. They suggested being allowed to let the festival event pay part of that overtime for City staff that had to be at that event, yet that was not allowed. In fact, they still wanted the two thousand three hundred dollars. Mr. Bowen thought that the fire fighters should be able to beat a private sector firm from Phoenix in helping out a charitable organization.

Mr. Bowen said the Tucson Fire Fighters enjoyed the fact that they did so much for the City of Tucson, that they give all their proceeds from the Chili Cook Off to families. Last year they were able to supply one thousand three hundred food boxes for families, plus five thousand dollars to help buy clothing for needy families. Mr. Bowen asked that the City work with staff to see if there could be a price reduction in some of the events and items that were in question.

Mayor Walkup said that the next speaker would be the last speaker on this public hearing.

Tony Novelli, had lived in Pueblo Gardens in Tucson for thirteen years and appreciated the opportunity to address the Mayor and Council. He was not being paid to speak and for the most part was representing himself. Mr. Novelli was also one of the organizers of the All Souls' Procession and they had not applied for civic event funding in the past, but had received some support from various city agencies. They had worked closely with Rose at the Downtown Alliance, Fourth Avenue Merchants' Association and a lot of other groups in order to put on a truly unique and sacred event. Last year their estimates were something on the order of four thousand people, in quite interesting form, who took to the streets with really no negative public impact at all. It was a unique and sacred event.

Mr. Novelli first encountered the event several years ago and realized that there was something about it that was unlike anything else that he had ever experienced in Tucson or in Chicago where he was from. That was that the lines were blurred in this particular event between the performers and the crowds. There was a really powerful aspect to that in that he thought for him personally and for a lot of people they stopped making that distinction in their own lives and a lot of them had become artists, a lot of them had risen to different roles in the procession. He happened to be one of the organizers of that now and he asked for support of events like this in the future.

Mr. Novelli felt honored to speak in the company of people supporting so many amazing events in Tucson. He thought that they were one of the reasons that Tucson was what it was and in the words of everyone, Jim Griffith and everyone else, included resonate totally with Mr. Novelli's feelings. He thought there was one part of it that had not been discussed yet. He also thought that while he had done work with the individuals on the citizens review committee for the *Houghton Area Master Plan* and while he had received a fairly intimate experience with a lot of community-related issues in Tucson, he

did not think this discussion was necessary, nor did he think that Tucson should have to compete with large events.

He said the City's own studies was one of the things that compelled him to speak and that there were no arts events in the nine events that were preselected. He knew from the City's own studies that the arts represented one hundred million dollars of activity from at least 2004 and that for every dollar that the City did fund arts, that they would receive about a dollar seventy-nine in revenue.

Mr. Novelli pointed out that he was not an economist, but it seemed that the City of Tucson should borrow money to get that kind of return and to look at the things that Tucson became famous for, things like the arts and some of the negative growth policies to connect those two. He did not think that the City should have this discussion. He thought that the arts and the cultural events that made Tucson a place that people would want to live in, were being pressured and being cut as well as a lot of the other nonprofits that were discussed earlier. There was a completely unsustainable growth policy. If growth was paying its way, they would not be having this discussion, services would not have to be cut and there would not have to be the distinction made between what a worthy event was to fund and what was not.

He suggested that as part of the whole thinking process around this that it should be used as fuel to continue fueling good policies, good programs, like building on the best of Tucson and really getting down to the hard questions. He did not think that citizens in the City of Tucson had gotten to the point where they were really serious about saying that there would be no more growth until it began paying its way. If it did not, then the City was just charging to the future and everybody would be suffering because of the cuts to the events. Mr. Novelli thanked the Mayor and Council for the time that he had been allowed to speak.

It was moved by Vice Mayor Ronstadt, duly seconded, and carried by a voice vote of 7 to 0, to close the public hearing.

Mayor Walkup said before he turned the responsibility of making the motion over to Council Member Scott, he wanted to compliment everybody who spoke. Their thoughts were very meaningful, well presented and that was very important to the Mayor and Council. He also offered his compliments to them for staying as brief as they could.

Council Member Scott knew that she was the council member designated to make the motion on this item, but said she would like to pass that ultimately to Council Member West, Council Member Dunbar, or Vice Mayor Ronstadt as they were members of the subcommittee.

Vice Mayor Ronstadt accepted the responsibility.

Council Member Scott pointed out that she had not given the motion yet and asked that Vice Mayor Ronstadt just hang on. She agreed with the last speaker and all of

those individuals who represented the various civic event committees. This was Tucson, and if somehow it could not find eight hundred ninety-five dollars for one event, another three hundred dollars for another event, or two thousand dollars for a third event, it seemed to her that the City was not stepping up to the plate to fund things that were really for the benefit of the entire community. It was a shame to have to come to such a place where this very small amount of money in a one billion dollar budget was the one place where people felt they should target first. If the City of Tucson was going to balance some huge budget on those events, which really was an outreach to everyone in the community and by and large those particular events were free, that was actually a crying shame.

Council Member Scott said she thought during their last campaign, that four of the council members who ran went through lots of panels and discussions. One of the groups that called upon the Mayor and Council to make some statements were groups that represented arts and culture in this community. Council Member Scott did not remember anybody saying, "Gosh, by gosh, I wish I could help you, I want you to elect me but I'm really not going to be able to support a single thing in this arena when I'm in my tenure." So she thought that the Mayor and Council had to look at those kinds of comments that were made when they were running for office.

Council Member Scott said she took those kinds of things very seriously. She never heard anyone say that the time had come to ask of the various entities to begin to come on their own by doing a match or having some sort of challenge, or going through a process of cutting back in a slower way. This was an actual cut. Fifty events, all free to the public, were taken and pared down to nine, and one of them would cost forty thousand dollars per year in Winterhaven. That was just one of the events that was being kept into this small group, so she would not be supporting a complete cut of all of these events or just paring it back down to just a few. She thought that was wrong and she was not going to support it; so she would pass the responsibility for the motion over to Vice Mayor Ronstadt.

Vice Mayor Ronstadt said that there was actually nothing to say. The Council, during study session, moved this item to the end of the budget process for consideration while they looked at the other mandated services. There were going to be plenty of opportunities for Council Member Scott and others to find funds for those things once the Mayor and Council got through the budget. So it was set at the end of the budget so that they could look for funds. However, at this point, the council was not taking any action until the end of the budget process.

Council Member Leal also wanted to thank the people who came to the meeting and spoke. He thought it was really a very thoughtful and appropriate conversation. He also thought that it was a shame that the Mayor and Council were even having this conversation. He noted that Mr. Novelli said that at the end of his presentation. If the phrase "cutting off your nose to spite your face," ever meant anything, Council Member Leal supposed it was really appropriate here. Some time ago, the City started putting advertising on buses and bus stops and he did not support that. He thought that

denigrated the spirit of the community. He thought that the civic events enhanced the spirit and soul of the community, so it seemed appropriate to him that the City took the revenues that it got from putting advertising on the buses and use that to supplement the civic event budget. Therefore, there would be no reason and it would be easier then for the Mayor and Council to say "yes" to the agencies because he thought they really needed to say "yes" to the agencies and "yes" to the community. He offered that for the Council to think about, and to analyze and consider as the City moved forward through the budget cycle. He said that Vice Mayor Ronstadt had mentioned that the Council was not going to be making a budget decision as they had outlined earlier this afternoon. Council Member Leal was going to stop for now. He knew that this conversation would continue in the community.

Vice Mayor Ronstadt pointed out that earlier, the Mayor and Council had discussed social service spending. The fact of the matter was that the City of Tucson had a very difficult budget year this year. There were probably going to be a whole host of ideas that would be brought to the Mayor and Council. He pointed out that there were signs in the back of the room saying "No New Taxes" but people want services; "Cops not Cows," the revenue that is generated from advertising from bus benches and from Sun Tran would actually go to support Sun Tran. So if the City used that money to support the civic events, it would have to reduce its spending in transportation. There were a whole host of pluses and minuses, so he did not think that anybody should leave the meeting believing that there were simple choices or easy solutions. There were not. That was just reality.

Vice Mayor Ronstadt had gone to a lot of events, participated in a lot of them and supported them financially. But, the City was in tough times with this Council and just to be a little technical, he was not talking about just one billion dollars, because a lot of that money had passed through but the Council had no discretion over it. They were only talking about three hundred eighty million and that was still a lot of money. That would pay for police, pay for fire, pay for transportation, pay for the libraries, pay for the dump, pay for solid waste pickup and pay for parks and recreation. Unless people were ready to raise taxes and raise fees, the only other option would be cutting. Vice Mayor Ronstadt thanked people for being at the meeting and said it was going to be a tough forty-five days while the City of Tucson got through this, and with that, he appreciated all the comments.

Mayor Walkup asked if there was further discussion before returning to the zoning issue.

Council Member Dunbar said she had just one comment. Since she has been in office, her office has been delivering mobile meals one Wednesday every month. Mobile Meals was desperate for people to deliver meals. Since the Mayor and Council were in such a giving mood that evening, they contacted her office and asked if other members of the Mayor and Council would get involved. That was yet another agency that desperately needed some help.

8. PUBLIC HEARING: ZONING (C9-04-01) KEMMERLY – FIRST AVENUE, SH, MH-1 AND C-2 TO R-3 AND C-1 ZONING, CITY MANAGER’S REPORT (returned to this item)

Mayor Walkup asked that Council Member Dunbar report on this zoning.

Council Member Dunbar reported that the Mayor and Council were all interested in quality infill projects and this zoning was an example of just one that was everything that this Mayor and Council had been talking about. It was new urbanism and the developers had been working on it for over a year and the neighborhoods embraced it. As the Mayor and Council had heard testimony, this was designed for empty nest or single women and again, with due respect to the City’s friends at Amphi, the rezoning was going to allow forty less homes than the current zoning had. Council Member Dunbar said she has had two rezonings since she has been in office and Mr. Scoville had been front and center of both of them. There was not a whole lot of land to work with in Ward 3, but she was sure that she would see Mr. Scoville at the next zoning, too; so with that, she made the following motion.

It was moved by Council Member Dunbar, duly seconded, and carried by a voice vote of 7 to 0, to approve the request for the rezoning as recommended by the Zoning Examiner with the following conditions: “residential units on proposed lots 10, 38, 39, 40, 41, 42, 43, 47, 81, 82, 83, 84, 85, 87, 93, and 94 shall be restricted to one-story. This was an amendment to condition seven. The remaining proposed lots along the north boundary should not exceed two-stories.”

10. PUBLIC HEARING: REGULATION OF MOTORIZED SKATEBOARDS

Mayor Walkup announced City Manager’s communication number 232 dated May 10, 2004 would be received into and made a part of the record. He also announced this was the time and place legally advertised for a public hearing on the proposed ordinance to prohibit the use of motorized skateboards on public properties and right-of-ways in Tucson. The public hearing would be scheduled to last no more than one hour and speakers would be limited to no longer than five-minute presentations. The Mayor announced he had more cards than he had ever seen before and asked that the speakers be direct and try to limit their presentations to three minutes. However, speakers would be allowed five minutes if they wished to take it. He asked for staff’s presentation.

Michael House, City Attorney, announced that the presentation would be made by Alan Merritt from the City Prosecutor’s Office.

Alan Merritt, Assistant City Prosecutor, opened with a slide presentation that pointed out that motor vehicles in the State of Arizona were regulated by the State. He wanted to call the viewers’ attention to some exceptions in Item B: Motorized Wheelchair, Electric Personal Assisting Mobility Device or a motorized skateboard. Those were not regulated by the State.

Mr. Merritt displayed various slides of examples that were regulated by the State and said some of them were examples of what could be seen in the State of Arizona and some might not be expected, such as the Segway.

Mr. Merritt displayed the statute that required vehicles to be registered. He showed a slide of a motorcycle and wanted to call to the attention of Mayor and Council the details of the equipment that must be on motorcycles for them to operate on the highway. In addition to the items above, it could be seen that there were certain requirements: headlight, rear light, brakes, brake light, rear view mirror, footrest, and so forth. Mr. Merritt said they included these devices, they were motor-driven cycles. They had under five horsepower and it could be seen by careful examination of the slides that they did not have the enumerated equipment that he had just mentioned pertaining to a motorcycle.

Mr. Merritt said that the moped was a special case. When it was being operated with the motor, it could not be ridden in the bike lane. It had a special exemption for the equipment requirements of the motorcycle and motor driven cycle. Mr. Merritt pointed out that the golf cart had been classified as a motor vehicle; however, for incidental highway use they were not required to be registered.

Mr. Merritt said that the neighborhood electric vehicle had lots of things that set it apart from the other vehicles being regulated. However, he wanted to call the Council's attention to the very last item on the list. If it were going to be operated on the roadway it would require a license plate.

The next slide presentation was of a device known by the trademark name of Segway. It was not a motor vehicle. It had several factors that set it apart from the other vehicles being regulated and could not be used on the roadway, but it could be used on the sidewalk. Next was a picture of a power go-cart that was a motor vehicle. If a driver used that device on the highway, Mr. Merritt said they would have to have a license plate.

Mr. Merritt said the City's ordinance dealt solely with motorized skateboards and motorized play vehicles. He showed a slide of the authorization, which was included to point out that local authority was allowed by the State to regulate those devices. The devices that he had shown up to this point were beyond local regulation. He also wanted to call the Mayor and Council's attention to the last three lines on the screen. In prior presentations, the question had come up as to why should they ban these devices rather than licensing them and regulating them and generating some revenue for the City of Tucson. The language that was shown in bold specifically prohibited the City of Tucson from doing just that.

Mr. Merritt's next slide presented the rudimentary elements of the City's proposed ordinance. There was a definition of the devices that staff proposed the Mayor and Council would regulate. The devices would be prohibited from use on the public sidewalks, roadways, bike lanes, paths and shared use paths. They could be used on private property with the owner's written consent. Even on private property, an operator

would be prohibited from disturbing the peace and quiet of a neighborhood. Also included in the ordinance was a definition of parental responsibility and the ordinance would require merchants that sold those devices to post the legal limitations of their use.

Mr. Merritt's next slide was two examples of the devices of which the Mayor and Council could regulate. There was a very specific definition set out in the first paragraph that stated those could be used on private property with the written consent of the owner.

Mr. Merritt's next slide was to illustrate the myriad of devices that existed and the number of manufacturers. The list of manufacturers that were illustrated on the left were a sampling while the list on the right were the various names that the manufacturers gave to their product. He showed a list of motorized play vehicles that obviously were not intended for use on the public sidewalks or right-of-way.

Regarding the safety and design concerns, Mr. Merritt wanted to call the Mayor and Council's attention to the first two lines, beginning with the first line, "These devices did not conform to the federal motor vehicle safety standards." That was very important. Secondly, these devices were not compatible to the road design standards set forth by the American Association of State Highway and Transportation officials. Down in somewhat smaller print there were several inherent factors in design specifications contributing to the danger of these devices. They included their high speed, inadequate braking, up-right riding position, their small wheels, short wheelbase and the steering mechanism. All these things contributed to these devices not being safe for use on the public highway.

Mr. Merritt's next slide had information that detailed the kind of accident statistics that were being accumulated around those devices. The United States Consumer Product Safety Commission of 2001 issued a consumer advisory on motorized skateboards. It also estimated five thousand eight hundred sixty scooter and power scooter related injuries and deaths for the year of 2002. From January 1 to July 1, 2001, two thousand two hundred fifty injuries and three deaths associated with motorized scooters were reported by emergency rooms around the country. These deaths occurred in different states and separate accidents. There were two children and one adult involved. The youngest child was six; the other child was eleven. The adult was forty-six years old. Mr. Merritt's last statistic was that most of the injuries occur to boys under the age of fifteen years. Mr. Merritt said there were some handouts in the lobby that detailed an accident that involved two girls, nine and ten years old, riding on the same device who were struck by a car. In some anecdotal information that had come to his office, since the year 2000 there had been four deaths in the Phoenix area.

The next three items after Mr. Merritt's next slide were blowups of manufacturer's warnings. He also mentioned that the various slides were also blown up on the boards out in the lobby and encouraged everyone to look at them. Mr. Merritt pointed out there was a lot of text on the slide and said the information was actually given to actual purchasers of the devices and said that the particular information that he displayed came from Go-Ped. He reported that the next slide portrayed the same kind of

language. He wanted to call people's attention to the first line: "Motorized vehicles carry inherent dangers." Then to drop down to the first bullet item that said that the manufacturer of the devices say that it would not be for use on public roads.

Mr. Merritt's next slide displayed a device from a corporation and the very first line echoed the language that had been heard before, "This product does not conform to the Federal Motor Vehicle Safety Standards, is not intended for operation on public streets, roads or highways." He wanted to skip down to the line that was underlined that began, "Do not operate this product in traffic." He said that was information that was put forth by the manufacturers.

In conclusion, Mr. Merritt said that motorized skateboards, motorized play vehicles, were not designed for, nor were they intended by the manufacturers for safe highway use and were incompatible with highway design standards which necessitated a prohibition of the use of these vehicles on the public right-of-way.

Mayor Walkup pointed out that he had received many speaker cards for the public hearing and said the public hearing would get promptly underway. The time was 8:34 p.m. and he would call people up for the next hour. He asked that they come forward as their name was called.

Dr. John Porter, thanked the Mayor and Council for the opportunity to be at the podium. He had not expected to be first. He was going to chill out to hear what everybody was going to say, but things did not always work out the way its planned. Dr. Porter lives in Pima County and he works at the University Trauma Center, the only trauma center in town, so he guessed he had something to say about what happens in Tucson. Dr. Porter said he was representing the Trauma Center and himself and he was not being paid.

Dr. Porter said his job was to take care of people after they have been hurt and he said they actually did a pretty good job of that. Their mortality rate is less than half of the national average for trauma centers since they have become the sole trauma center. Tonight was a unique opportunity for him because he was not taking care of someone who had already been hurt, he was beginning to prevent someone from being hurt. It gave him great honor and privilege to do that, because his job was difficult enough taking care of the people who were hurt, but to stand there and stop people from being hurt was quite important to him. That was why he had been in the audience since six o'clock waiting for the chance to talk to the Mayor and Council.

Dr. Porter said that some people were going to stand up and ask how many people have been hurt. He said he looked through their records and there had been one or two persons. He asked the council if they had to wait for someone to get hurt before they changed the rules. He said that the nice presentation showed how unsafe the devices were. He had no gory pictures, no slides, but just one thing to say in terms of how dangerous the vehicles were from a medical point of view. If the drivers were going twenty miles per hour on one of those things without a helmet, their body would be going

twenty miles per hour. When they fall off, they would be going twenty miles per hour. When their body hits a tree or the ground, their body would still be going twenty miles per hour and it goes from twenty to zero, just like that. But their brains and their organs would still be going twenty miles per hour and they do not go from twenty miles per hour to zero until they rip, tear, bleed and die or get hurt. Dr. Porter repeated his last sentence to emphasize the seriousness of the potential injuries.

Dr. Porter said this would be the opportunity for the council to do the right thing to protect kids. Most of the people hurt were under the age of fifteen. They were here to protect kids. This was the opportunity to do the right thing, to ban these, so that the streets were safer, the kids were safer, and so he could get more sleep at night. He expressed thanks for the opportunity to address the Mayor and Council and added that he felt sorry for the person who would follow his presentation.

Andrew Nutbrown, representing himself, said the explanations that were brought up at the meeting did not suit the vehicle because anything was dangerous if it was used inappropriately and recklessly.

Mr. Nutbrown has driven bicycles and automobiles in this town, has ridden motorcycles, and has even learned to fly. Anything would be dangerous if it was not used appropriately. Mr. Nutbrown said he had been employing that vehicle back and forth to work successfully for ten months, he had even ridden it at night, and he was visually impaired. Anything was dangerous if it was not used appropriately. He did not find the vehicle to be dangerous; he found it useful. It had served him well for the last ten months and he has had zero issues with law enforcement, traffic and he had not even dumped it. In Mr. Nutbrown's opinion, the vehicles were not dangerous; it was the people using them that were. If the vehicles need to be restricted he asked that they not be taken away from people who want to help provide for themselves by getting back and forth to work, by using the vehicles to open doors so they can generate more income, maybe have options open to them that normally would not be. By doing this, taking this privilege away would close doors for people.

Mr. Nutbrown said he was in a situation where he could not afford to drive. The bus did not open the doors for him and he could not even use it to get back and forth to work. It seemed to him that the statistics, as demonstrated by what the staff had presented, showed that it was younger adults who were the problem, not people like him who wanted to use the motorized skateboards in a constructive manner to get back and forth to work.

Mr. Nutbrown was not doing anything wrong. Local law enforcement had no problems with him and he had not done anything to disturb traffic. He recognized the rules of the road based on his experience. If it had been bicycles, motorcycles, or cars he could understand how to operate that vehicle safely. There would be too many doors closed to him if this was taken away, it was not fair. The City of Tucson wanted to raise his rent with taxes and increase his garbage fees. He said the City of Tucson was squeezing the little guys. That should stop, it was not fair to them.

John Abraham, representing himself and his thirteen year old son, said his son had some form of vehicle or another for eleven years and had lived to tell the tale. He had a moped and a motorized scooter for three years. It seemed to him that those vehicles were used two ways, recreationally and pragmatically. Mr. Abraham said from firsthand experience riding a go-ped was a lot of fun and he did not know why the City of Tucson was repressing the fun of children. It seemed to him there were a lot worse things they could be doing. Probably not unlike the fun derived by an adult from driving an Austin Healey.

On a pragmatic scale, Mr. Abraham could not tell how many trips his son had saved his mother. He used the vehicle to visit his friends, visit his neighbors, to go to the corner store, to rent a video, and to go and collaborate on homework with his neighbors. He used it every day for many purposes. Otherwise, his mother would have to fire up the SUV, use at least ten times the amount of fuel, and this would create more pollution to get him from point A to point B. He would submit that those things were perfectly ecologically sound and if operated properly, perfectly safe.

Mr. Abraham was well aware of the inherent risks and the possibility of getting killed on one of these vehicles. The fact was that one thousand of these vehicles had traveled Tucson now for years and nobody had been killed. He asked the Mayor and Council to consider not banning these devices and allow their use in a proper and perhaps otherwise regulated way. He thanked the Mayor and Council for their consideration.

Mike Miller said he recently purchased one of the little scooters after studying them for a year and a half. He was interested in ecology and safety. Mr. Miller said he is sixty-six years old. He had not had a chance to ride it very much, but said it was fun to ride. He asked why the City was doing this. There had to be other ways of addressing these issues.

He asked the Council about the paragraph that said, "It is recommended that following tonight's hearing, the Mayor and Council either adopt the proposed ordinance or provide direction on final wording for an ordinance to cover motorized skateboards within the city limits." Did that mean that his talking to the Mayor and Council was a waste of time. Were the Mayor and Council going to make an ordinance regardless of what he said tonight. He asked if anybody cared to comment.

Mr. Miller had three points to make. He wanted the City of Tucson to allow time for more study. He had ridden motorcycle and bicycles. Statistics from the Department of Transportation stipulated there were more accidents and deaths caused by motorcycles than would ever be caused by these little vehicles. It saved him money to use his to go to the grocery store. He thought it was basically anti-kid. They could say that they were worried about the children in the community, but they were all riding skateboards. They do dangerous things. He was really tired of people trying to protect his life. He is sixty-six years old and he had somehow made it. He was sure all of the thirteen and fourteen

year olds were also going to make it. They were going to take some kind of risk in their lives. He urged the council to give them a break. He thanked the Mayor and Council.

Pete Asplund was not being paid to speak and was there representing himself. He thanked the good doctor for his comments about wanting to get motorized skateboards and play vehicles banned from City streets. They were a nuisance to neighborhoods and he had a personal experience where he almost hit a child on one of them on Halloween night. The child was coming right at him at eight-thirty at night in a black Halloween costume. He thought they needed to be off the City streets. They were dangerous, they were hard to see even in daylight, and they made a lot of noise. It was important to be safe and to try and make the trauma centers less busy. He thanked the Mayor and Council.

Travis Fueston lives within the City of Tucson and was not being paid to speak. He used the scooter to go back and forth between work and school. It saved him a lot of money and he was very safe on it. He did not know about any other people, he just knew about himself. He did not understand why they had to take away his transportation choice. It bothered him that the Council would take away a choice that would save gas and money. He could afford school this way. Mr. Fueston did not understand the Council.

Dave Croteau was not being paid to make a presentation. He had purchased an electric one, two months ago. He had been riding it on the City sidewalks in his neighborhood and he rode it to get to the meeting that afternoon. He found that there was a difference between some of the banned vehicles and some of the vehicles that the State had authorized, particularly the Segway vehicle that had been mentioned as an Electric Personal Assistative Mobility Device. One of the vehicles the Council was considering banning was similar to Segway. It was what he called the poor man's Segway and it was effective in riding with pedestrians. Mr. Croteau had driven it a number of times on Fourth Avenue. It had disk brakes, a slow speed, and was as quiet as a motorized wheelchair. It maneuvered very well in a pedestrian situation; he said he had been able to travel the inner city at a much quicker rate than walking and it was true alternative transportation, something the City had been promoting. He had waited in Vice Mayor Ronstadt's office for a while to try and talk to him about this issue and some other ones, and he noticed the plaque that said the City was promoting alternative transportation.

Mr. Croteau thought electric scooters were safe at slow speeds, those that did not go over fifteen miles per hour. The City had invested a great deal in sidewalk infrastructure and it was underutilized. The American Disability Act (ADA) adaptations done throughout the City of Tucson were not utilized to capacity. He realized that fast scooters were dangerous, anything over twenty miles per hour was dangerous and very risky and was not compatible with pedestrians. He wanted the Council to consider the poor man's Segway, the one that he had been using in the City effectively for the last two months. He asked the Mayor and Council not to ban the poor man's Segway.

Peggy Noltz was not being paid to speak and she was representing the Coyote Corridor Neighborhood Association. They were located at the southeast quadrant and the neighborhood had approximately one thousand homes. She could not speak for everybody in the City, but she could speak for what she saw in her neighborhood. She walked twice a day and she was not out in the one thousand homes, but she was out in her neighborhood frequently. She saw no helmets, children and people just riding as they go. She hoped that the Council would ban them. She knew there were other alternatives in transportation, as shown by the slides, and that there were other alternatives in inexpensive modes of transportation. She urged, as the voice of her neighborhood, that the council ban them.

Joseph Alicata was not being paid to speak and was representing himself. He has had a scooter for about ten months. He went back and forth to work on it with no problems. He went through the University of Arizona every morning and there was a school just south of Sixth Street. Sometimes he went to work when the kids were going to school, crossing the crosswalk. He slowed down and crept by everybody. The commuters on the road during rush now asked him where he got it and how the gas mileage was. He got seventy miles per gallon of gas as opposed to his three-fourth ton suburban, which had a 350 motor, which got about six to eight miles per gallon, or the alternative busses. For every dollar that he paid he could go a week on gas.

Mr. Alicata said the buses did not run as early as he goes to work and it took twice as long on a bus. He urged the City to not ban them, but to legalize them. Otherwise, he did not have a good mode of transportation, because his gas bill would be fifty to sixty dollars a week to go back and forth in his Suburban.

Carl Fritzsche thought if the Mayor and Council were to regulate the scooters at all, maybe they should mandate helmets or some little thing. He thought it would be unfair to totally ban them. He was a senior citizen and he used that kind of vehicle to go a few blocks to the grocery stores. Since he was not going to work every day he would not need to use a car that often. For the little bit of transportation he would need, it would not justify the expense of maintaining a car. It would damage the environment, making it worse by using up gasoline that was getting more expensive because there was a big demand for it and it was scarce.

He was trying to help the community, the country, and the world by economizing on fuel and not polluting the environment, by being conservative about his transportation. The Mayor and Council wanted to take it away from him and other people that depended on it. He asked the Mayor and Council to please think this over carefully and to not ban them.

Oscar Encinas said his bike had been one of the most fun things that he had experienced. He has seen a lot of the City that he normally saw in his truck driving around; but he never really enjoyed what was out there. He thought that buying scooters for him and his cousin was the best thing that had happened to him. It was about going to the store to get some money orders for his mom and saving the gas. He knew the Council

was here for all of the children and worried about what could happen. He said that ATV's were more dangerous and ATC, high-powered equipment like that. He felt safer on his scooter where he could actually feel the ground. He knew that if he crashed at twenty-five or thirty miles per hour he would survive it. He had the right equipment, helmet and stuff, but on an ATC or ATV four-wheeler, one would get hurt badly. He asked the Mayor and Council to please look at it.

Bill Katzel lives one block inside the county and everything the City does affects him, his family, and his neighbors. He shops in the City and he recently owned property in the City. He owned a business in the City for seven years. He added that residency did not invalidate reference of comments. He proceeded to read his testimony before the Mayor and Council regarding motorized skateboards.

In addition to consideration of regulations governing motorized skateboards, Mr. Katzel offered the following comments. 1) Endorsing bicycles as an alternative mode of transportation. A bicycle was a well-established human powered device and already had many miles of well-engineered infrastructure. With a bike, and a bus with a bicycle rack, a citizen could commute virtually anywhere in the valley. 2) Also, the new City Attorney might want to follow in his predecessor's footsteps by creatively interrupting state law, i.e. A.R.S. 704A and employ this interpretation thereby forcing them into a court jurisdiction process. He thanked the Mayor and Council.

Frank Salbego represented himself and was not being paid to speak. He resides in the City limits of Tucson. He wanted to come at this from a different venue. The venue was quite simple and he would speak as a father and a grandfather. He told the Mayor and Council that these scooters had to be banned. He listened to a lot of six-foot tall guys give presentations about their livelihood and did not deny them their livelihood and he was not coming from that venue. He was thinking about the kid, he would call Matt, who was probably eight or nine years old. Every time he saw him come down the street he saw his two grandkids, which were five and seven. This was his venue and his cause.

Mr. Salbego said he was going to paint a worst case scenario than the doctor painted at twenty miles per hour. He was thinking of Kevin and Scott going twenty miles per hour and if they got injured very seriously or fatally. That was one part that he saw as a grandfather. He would be driving in Tucson, which on the very best day was a nightmare, now he could not see the little guys in time to stop. He was talking about the kids. He was not talking about the six-foot guys that were up here. He thought he could see them. He was talking about the little kids and the nightmare that they would have to live with for the rest of their lives if they killed or maimed one of those kids. He asked the Mayor and Council, and City Manager to ban them, put any kind of provision on them that they need, but ban them.

Lonan Jant was speaking for himself and was not a paid speaker. It seemed to him that there were certain things that adults forget about. One was liability. People who drove cars had to pay a tax on the car and they had to pay a lot of money on insurance. What were these people paying to cover if they hit someone. Were they going to be paid

out of uninsured or noninsured motorist? In addition, he thought that all of the problems started with very reckless young men and girls, it did not start with adults.

Mr. Jant saw over and over again young teens operating these things on the sidewalks in a severely reckless manner. They would be interfering with people walking on the sidewalks, interfering with people walking with little children, going on the road at night with no lights against traffic, and weaving in and out pretending that they were on the back of a speedboat going from side-to-side on the road. Again, he did not think it was the adults, he thought it was the children; but how could they tell the difference. If the Mayor and Council cannot ban them, then he thought that the Mayor and Council needed to severely restrict the age of the people who used them. Somewhere, someone had to be accountable for the financial responsibility of what happens when there was an accident and not put the burden on others who were paying insurance and paying that heavy state car tax. He thanked the Mayor and Council for their time.

Yolanda Herrera LaFond resides near Twelfth and Valencia and is a City resident. She is the current President of the Sunnyside Neighborhood Association, also one of thirty co-chairs for the Southside Neighborhood Association Presidential Partnership (SNAPP). She was a youth employment supervisor and past youth diversion counselor. Having worked at Tucson Medical Center while it was still a trauma center, she understood the long-term effect of head traumas and costs of life.

The Sunnyside Neighborhood Association had a long practice about the cost of life, not only for its members, the Mayor and Council's constituents, but also their children. For many years, they have worked with the youth in the community and continue to strive to be role models, guiding them into selecting better and safer paths down life's road. She supported the City's concern to be proactive rather than reactive to potential lost lives of residents, especially children, in the City of Tucson. They could not get children to cross the streets safely while on foot. She said she would hate to see scooters, motorized skateboards, or go-cart type vehicles; they were a disaster waiting to happen. With that would come loss of life, the finger pointing, accusations, lawsuits and eventually government regulations.

Ms. LaFond said it would be better to set safety measures in place now. Scooters and children who were not aware of safety near the same surfaces traveling down roads with more than fifty to seventy cars were hazardous not only for the motorized scooters but for the drivers attempting to safely maneuver around the city streets. The Council had asked how many drivers would swerve inadvertently to avoid a collision with a motorized scooter, especially when they were driven by young and inexperienced riders; and what about the young and inexperienced drivers on the road, still getting their feet wet, with their new drivers license. Those who were concerned about saving gas always had the option of public transportation, thus creating a cleaner and safer environment for the benefit of Tucson's air quality and congested roadways. She said that she supported seeking safe regulations for motorized scooters, for the dollars earned by those selling those types of vehicles would never outweigh the first life that was lost.

Dominic Timpani said his parents did not pay him to come there. He is fifteen years old and he is an honor student in high school. He worked and saved money for two summers doing yard work to purchase his scooter. This taught him responsibility, dedication, and reaching for goals. While working for two summers, he used lawn mowers and weed whackers, which were louder than his scooter. His parents gave him guidelines and rules and he wears a helmet and gloves. He had certain hours to ride to be considerate of his neighbors. He had to read the driving manual and learn road safety before he could ride his scooter. He had two lights and reflectors on the front and the back of his scooter. He stops and walks his scooter across intersections for safety and he helps his family by riding to the store when they were not able to, to get bread and other things.

He did not understand why he would be able to get his driving permit in a week, but would not be allowed to use his scooter. The car goes one hundred twenty miles per hour, but he could only go twenty miles per hour on the scooter. He was willing to teach the younger and inexperienced about all of the road rules for safety and the maintaining and care of a scooter. He was fine with getting a scooter permit or license. He asked the Mayor and Council not to ban his scooter. He said that they could work together to educate and teach road safety to everyone.

Mark Timpani was not a paid speaker. He spoke in support of the scooters. It was his son who just spoke and they put more regulations on him than the City would. They were for regulating and they were for safety. Obviously, people and kids were going to get hurt. Skateboards had been wreaking havoc in parks and neighborhoods for years and years. Those kids cracked their head, elbows, knees just like any other sport and they were not banned. Three years ago when they came to Tucson bicyclists were riding thirty or forty miles per hour on Kolb Road. He called and was told that it was done here and it was legal.

This made no sense to Mr. Timpani because they were traveling with cars, vehicles and trucks. The other day he saw a four-wheel quad, ATV, going down Golf Links. He called the police and told them it was going forty miles per hour or faster, and they said that it was legal. This made no sense to him that they would have that speed and power and it would still be okay here. The bottom line was that banning things just for the sake of not wanting to spend the money and the time to regulate it did not sit right with him and he did not think that it would sit right with a lot of people in Tucson.

Mark Mignone represented Bladez Corporation, manufacturer, and he did not live in the City. Being a representative of the manufacturer, he believed safety was the number one issue. He had heard situations where a person was not wearing a helmet, and that was wrong. On every box for every model and make it was posted sixteen or older and they must wear a helmet. Reflectors and lights should be mandatory. Mr. Mignone read the state law for California. In February 1999, California State Legislation proposed a bill to encourage the use of alternative forms of transportation with low or no emissions. This bill would better be defined by a two-wheeler motorized scooter as well as specified where they could only be ridden on public bike lanes.” Senate Bill 441 was

sponsored by a company that manufactured electric scooters who attempted to create a definition required for motorized scooters. Electric and all other non-electric scooter would be considered illegal, including low admissions, gas powered scooters and further developments of hydrogenate liquid national gas, propane, and compressed nitrogen motorized scooters.

Mr. Mignone said the above definition successfully challenged in Assembly Bill 1650 to legalize non-electric powered motorized scooters. January 1, 2000, it was legal to drive scooters on the streets in California providing that the drivers followed the legal requirements by the State of California. Drivers must be sixteen years or older. Having a California driver's license and registration would not be required, so it was just an age limit. Drivers must have a helmet. He agreed with the doctor that came up earlier; they should all have a helmet. If they did not have a helmet then it should be taken away from them and they should be given a fine.

It seemed to him that a helmet had to be mandatory regardless if it was a bike, scooter, or whatever. Scooters must be driven in a bike line or on the right of the side of the street and may not be driven on the sidewalks. A bike lane was something for an alternative use of transportation, a bike; it was not a car. This was a motorized vehicle. He spoke to a couple of officers outside and said he had to train officers from San Clemente, California all the way to Los Angeles. There were not laws for these personal transportation vehicles. It was a personal transportation vehicle and that was what they made. That was what their Research and Development Team got up and went to work for every morning. Mr. Mignone said that regardless of their age people needed to be mobile and this was what helped them.

(Several speaking at once.)

Mr. Mignone said if a motorized scooter was driven at night, reflectors or light equipment was required. This item of safety equipment could be purchased at most bicycle shops or scooter shops. That was part of the law, saying that this was how it was going to be done. If they were going to be on a scooter and driving around at fifteen miles per hour, then they must have a helmet and have reflectors. In Europe they must have reflectors and a light that strobes. He asked Mayor and Council to consider that.

Emissions were huge in California. They primarily focused on this law and urged people to find other forms of transportation because they were worried about emissions. He said that by 2006, two-stroke engines were going to be regulated by emissions. California was the only state that already had this, but everyone else out here was pursuing their own version. California said by 2006 everybody was going to have to oblige by their laws. The manufacturers said they were going to have it done by 2000 and they did. Every one of their scooters, hundreds and thousands of them, have emissions and are carb approved.

Mr. Mignone said he heard someone talking about noise, maybe in a gated community. He understood because he lived in a gated community. The last thing he

needed was people riding around being super loud. The manufacturer for COSTCO, which was one of his accounts, actually designed one that was carb approved, emissions friendly, held 33-cc gas, and it made a very low noise. People who go to COSTCO to shop primarily had money. They wanted to spend money, and they did not want loud personal transportation vehicles. They also have electric which was completely silent and that was a whole other form. He asked the Council to remember mobility, that it was important regardless of your age, or the quality of life. All of these little focuses would improve the quality of life.

Mr. Mignone touched on insurance. He heard someone speaking about insurance and his company had five million dollars in insurance. He could not speak for go-peds, or the others, but it was something to consider. He said if anyone had questions about state laws or if they wanted to meet with them, or to educate a community as a whole it would be his pleasure. Regulations were okay, but a complete ban was something that the Mayor and Council should not be thinking of doing, because they all need to get around.

David Lansisch was not being paid to speak. He owned Tucson Scooter and Motor Toys and encouraged some sort of regulation on this. They were coming to an agreement that it should be sixteen and older. The big issue was kids and kids getting hurt. Phoenix, Tempe and Mesa all had some sort of ordinance to regulate the younger kids who were behind cars, grandma and grandpa's kids who could get hurt who were eight years old and did not need to be on a scooter in the middle of the street. He said he would encourage non-banning of scooters.

The scooter industry in this town, between all the big box stores, COSTCO, Target, Wal-Mart, anyone who sold these things, was well over five hundred thousand dollars a year in taxes. Listening to the budget woes an hour ago the City needed money to divvy up to whoever it needs to be divided out to. He would not encourage a ban and he was going to let other people talk who needed to talk. He asked for some sort of stay, whether it would be thirty days, so that they could come to some sort of conclusion for alternative means of not banning the scooter, or something friendly that they could keep the kids off the streets. Let the people who need to get back forth to work use these as an alternative form of transportation. He thanked the Mayor and Council.

Scott Osburn was not being paid to speak. He owns a scooter, but he also understood that there was danger out there. It did not matter what there was out there, whether it was motorcycles, bikes, scooters, they did not care, they want them off the road. He worked at one of the grocery stores in town and if he was out gathering carts, people were on the phone or they were talking or they were in such a big hurry they did not care. Get out of their way. That was all that they were concerned about, themselves. The kids did not understand what was going on. He agreed that there should not be a ban, but they should somehow be regulated. Kids do not think about the danger, or what is involved. They only think about going and having fun. That was all they wanted. There was danger in anything they did. He asked the Council to regulate them someway,

like age or something, instead of banning them. If not, people will say they are going to ride it anyway. He thanked the Mayor and Council.

Ruben Elkins was representing himself and he was not being paid to speak. He invested three hundred dollars in one of the scooters. He owned three vehicles, but he worked within six miles from his job. With the rising gas price, it was not economical to drive plus he felt good about not contaminating. He knew about the pushes for carpooling and other alternate modes of transportation. The Mayor and Council said one thing and then they did other actions. He said that he was being proactive in having this alternative mode of transportation.

The buses and carpooling were not always conducive to all of those that work. Some get off late at night and he knew gentlemen that took the bus then had to ride a taxi from the east all the way back to downtown. It did not work for everyone and this was just another option to take work without having to contaminate the environment or pay that ungodly amount for gas. His was electric and it did not make any noise. It was safer than a bicycle. He had ridden bicycles, skateboards, scooters, whatever. It was maneuverable and the brakes were good. The top speed, like another gentlemen had mentioned, was fifteen miles per hour, and he passed through the University of Arizona going home and he had bicyclists passing him to get home. He was not in a hurry to get home; he just wanted to get there. This was a good viable way to do it. He proposed that the City not go to a drastic ban. They had to work towards a solution. He thought he was part of a solution, not part of a problem. He thanked the Mayor and Council for their time.

Hal Burlingame was not a resident of the City, but he did work in the City. He is the manager of Tucson Scooters and Motor Toys at Speedway and Columbus. He was not being compensated for being there. He also was the founder of "adapttucson.org", an information website under construction for the subject for the city's inability to adapt to new and changing modes of personal transportation choices. Busses or bicycles were not choices for a lot of people. People leave too early to take the bus and it does not get close to their home. People need to be able to make a choice.

ADAPT stands for Americans Deserve Affordable Personal Transportation. With skyrocketing gas prices, insurance rates, traffic congestion and pollution repressing the public's ability to adapt to a cost effective, ecological responsible mode of transportation that gets on the average of one hundred miles per gallon - electric scooters that make no noise, no pollution and no disturbance - it was disturbing in itself that the Mayor and Council were trying to repress them. They did not need a ban. They encouraged regulation. They were all working toward regulation and they were helping Council Member West work towards regulations to understand these things to try to come up with definitions and get a grasp on the whole problem. Working towards a solution of safety for everyone.

Mr. Burlingame believed that was what everyone was looking for. It encouraged regulations and they did not want to hear about kids being hurt. These kids had no business being on power scooters at eight or nine years of age. Adults needed to be able

to make a choice, to make their livelihood, whether it was to get up early in the morning before the busses take off or to be able to get from where the busses did not run. Bicycles were not choices, especially during the summer time here in Tucson. It was a choice people had made. The choice to use economically responsible, ecologically responsible vehicle. He asked how much liability was placed on bicycles and bicycles go faster than scooters. Bicycles can run into cars, cycles were everywhere, and they were not behaving according to the laws. They were not getting off their bicycle and crossing crosswalks. They were not getting off their bicycles and they were not doing what they were supposed to do. They were riding two and three abreast along Speedway and along Broadway. They believe they own the road because they were like pedestrians. Well they were not. They were not obeying the laws and yet where were the fatality rates. Where were the incidents of scooters versus bicycles versus cars? Being proactive was one thing, but being alarmist was another. There was no body count and there was not going to be a large body count compared to irresponsible people on bicycles. If this was regulated and made safe for everyone, then there would not be a problem. They could all co-exist and do what they need to do.

Mr. Burlingame asked the Mayor and Council not to suppress their creativity and their ability to get around and do what they need to do. There was no reason for it. They could work and get along and they could all adapt to each other. All they asked for was that the City not simply repress them and ban them from doing what they needed to do. He asked that they all work together towards regulation and to make this safe and educate everyone. Let the industry jump in and help the Council out. They did not have to bear the entire burden. He asked the Mayor and Council to let them help them to help the industry. He thanked the Council.

Sammye Self was not being paid to speak. She said they were a foster adopt family and they had six teenage boys who followed all of the regulations of the scooters. They were a very tough, strong family and kids were going to do what they were going to do. Try to keep them from doing something and they were going to do it anyway. When she was younger she lost a brother on a motorcycle. He died when he was eight. Her dad lost his leg on a motorcycle, but it did not stop her mom from becoming Powder Puff Queen of Texas because of that. She knew that putting bans and regulations was good and needed to be done, not banning but regulating them for kids.

Ms. Self added that kids were going to do what they were going to do and if stuff was taken away from them, it would not stop them. The City was already taking so many things from the schools, arts and music, and they had nothing to do after school. Her kids were home and they were not allowed to watch television until 6:00 p.m. and they were bored to tears. In Oro Valley they were a lot stricter then they were here in Tucson. They looked for things to do. She had to follow them around all over the place making sure they were not getting into trouble. They had nothing and when they did ride their bikes they went faster than scooters. The scooters were fun, but keeping them out of trouble and following regulations was more important.

Mayor Walkup asked if there was anyone else in the audience wishing to be heard on this item. Hearing none, he asked for a motion to close the public hearing.

It was moved by Council Member Ronstadt, duly seconded, and carried by a voice vote of 7 to 0, to close the public hearing.

Mayor Walkup said that they were scheduled to talk to Council Member Leal, but he thought he had yielded this to Council Member West.

Council Member Leal responded that he had.

Mayor Walkup called on Council Member West.

Council Member West asked if the Mayor could clarify or show the picture of the one slide of the vehicle that was being considered as part of the ordinance. Someone mentioned an ATV and she did not think it was the Council's intention; they were specifically talking about a vehicle that they were looking at as far as the ordinance goes.

Mr. Merritt said these were the devices that they were speaking about. ATV's were already regulated by the state.

Council Member West said that was an important point. ATV's are already regulated by the state. She wanted to make sure that people understood. This was Arizona it was not California. Under the Arizona Revises Statute bike paths were for bicycles only, so other vehicles could not ride in the bike lanes.

Council Member West asked if scooters were alternative forms of transportation or were they a neighborhood nuisance. She did not think that was what they were discussing. She first looked at the issue as part of a neighborhood subcommittee with Council Members Leal and Ibarra. She thought at the time that some kind of regulation would be a good idea. As they did more research they found there was indeed other cities that were considering a ban. She believed Las Vegas had either passed a ban or soon would. One of the reasons the Council was looking at this was that this motor vehicle did not conform with federal motor vehicle safety standards. The manufacture admitted this. They heard a young man mention it was a dangerous vehicle on public streets. She also was interested in preventing the calamity described by Dr. Porter, who was there on a professional basis. She thought that was something they would like to avoid.

It was moved by Council Member West, duly seconded, to pass and adopt Ordinance 9962.

Mayor Walkup asked if there was further discussion.

Mayor Walkup called on Council Member Scott.

Council Member Scott had spoken with the Fire Chief. He made a comment to her and she asked staff to clarify. If children under the age of sixteen were riding these,

were they also going to the gas stations to pump gas. She asked the Fire Chief to make a comment about that.

Dan Newburn, Tucson Fire Chief, said Tucson had historically been very safe for the kids to grow up and it was because of meetings like this. They have looked at the safety of kids in swimming pools and the safety of kids on bicycles and he applauded the efforts of the Police Department and the Council to look at the safety associated with scooters. One of the issues was the ability for children under the age of fifteen to do things such as make the decisions on whether or not to interact with traffic; whether or not they had the ability to work flammable liquids, gasoline and those kinds of things. They were having several problems with juvenile fire setters in the community. He was hesitant to mix gasoline and the youths. He also hesitated looking at the street to mix children under the age fifteen with motor vehicles. Maybe they only go fifteen or twenty miles an hour but when combined with the speed of a forty-five miles per hour pickup truck there was a huge impact.

Council Member Scott thanked Chief Newburn, and asked if that was one of the many safety precautions that accompanied some of these vehicles that the Council was going to be considering.

Mr. Merritt replied yes.

Council Member Scott said whether they were electric or gas, or whatever the warranty that came with them said, they should not be used on public streets, roads, or highways; do not go on uneven surfaces; avoid chuckholes, surface cracks or obstacles, or night or conditions of darkness; do not have two people on them; do not use on wet surfaces, and the companies were saying that they were not liable if they had a problem. Bladez' own materials said they should not be used by minors without adult supervision. If the Council were to include that, since they were not roadworthy and they were available on the market, under what conditions did they have in the ordinance that anyone owning one could use it. It would seem that the manufacturer said do not use it on streets or uneven surfaces. Where could a person actually use this and under what conditions. She asked what was in this ordinance.

Mr. Merritt said the ordinance provided for the use on private property.

Council Member Scott asked if anyone who had one right now if they must get permission.

Mr. Merritt replied that they must get permission.

Council Member Scott asked again if they must get permission.

Mr. Merritt replied that they must have written permission of the owner.

Council Member Scott said that a person who owns them would have to get permission from the private property owner in order to be able to utilize these particular ones.

Council Member Dunbar asked if that was within the City limits.

Council Member Scott said within the City limits. A lot of the folks were adults and that they used them properly, with care and so forth. Yet, if an adult were to have an accident and end up with an injury, who would be liable if they were on a city street or bike lane.

Michael House, City Attorney, replied that was discussed in executive session and he thought that the Council should not be discussing it here in an open session.

Council Member Scott said okay. She thought she would bring up the issue of insurance, which apparently was necessary and was easily acquired by the owners. That was really where she was going.

Mr. House replied yes.

Council Member Scott said she knew that the insurance piece was very important to the rest of the community because any monies that were handled by the City were basically tax dollars. The high risk had to be covered by somebody so the owner of this particular vehicle should be covered, but that was not a requirement and she questioned whether that was in this ordinance.

Mr. House replied the ordinance was a prohibition on the use of these vehicles on public streets. There was an alternative, which would have regulated the vehicles, that one of the requirements could have been requiring liability insurance.

Council Member Scott said it was clear the only place that one could use this was with permission in private areas. She asked if a school was a private area and whether the University of Arizona is a private area.

Council Member Dunbar responded that it was State property.

Council Member Scott said she was just trying to clarify where a person might utilize these. She thought it was important to understand that the Mayor and Council had a tough decision, but she gathered from the audience that there had been some conversations with the subcommittee. She asked if they had what they would call a host of people from the industry, from those who owned them to come forward before their committee in order to have what would be called a good hardy sampling, so that what was brought forward was a consensus.

Council Member Ibarra thanked Council Member Scott and said that as chairman of the sub-committee he would respond to the question. They had a public hearing and

they had discussions. It was evident, as Mr. House said and as the City Attorneys said, the main issue was not about noise or size of engines or the height. The liability towards the City if these were used on City streets was why they came to the conclusion that this was the best alternative. If they were to do anything else then they would still have that main liability. He also asked Mr. Keene and asked if he could follow up on it and asked what the next step or the final step would be.

Council Member Ibarra thought Mr. Keene could let everyone know that if this motion passed with the ban, when it would be enforced. How it would be enforced and what dialogue the City of Tucson would have. There was a large number of people who had bought these particular items, at the same time there was going to be some sort of grace period involved. Letting people know that they could not use these particular items on the City streets and what the fine was if somebody did use it on a street after the grace period. How would it be enforced. He thought that needed to be up front to the public on this particular aspect, because this was going to be a significant change if this motion were to pass.

James Keene, City Manager, explained that if the motion were to pass, then the City Manager's office would bring back the final ordinance adoption.

Council Member Ibarra said that this was it.

Mr. Keene said that it would not have a grace period with this, as it had an emergency clause, as the Council often does when they pass an ordinance to essentially put it into effect right away. It would be effective and he thought the question regarding public notification and out reach was one where staff would take the direction of Mayor and Council, as to how much they wanted them to do. He thought that it would be unavoidable that once the ordinance was in effect, the City would need to be enforcing the ordinance.

Council Member Scott asked if there was any discussion in the subcommittee because she did not see it in the write up or she said that it would be good for the public to know about adults. The biggest concern was about use of minors regardless of their age. She asked if there was discussion at all about adults and how they might be responding.

Council Member Ibarra said they did not differentiate between adults and children, because whether it was a thirteen-year old or a forty-five-year-old the issue was the bike being on City streets. Regardless of who was on it, the bike was still going to be on City streets. If someone fell the City would be in a potential harmless situation. He was being delicate because he knew Mr. House was looking at him and kind of smiling, at least he hoped he was smiling. It was never differentiated between adults or children. In the end they kept coming back to the same point. The manufacturers were saying these were not supposed to be on City streets. Then why would they talk about anything else other than the fact then they were not supposed to be on City streets.

Council Member West said about thirty-five people came to a lunch discussion where Mr. Merritt made a presentation. They had a lively discussion on both sides of the issue. There were things that fell under City purview and there were other things that did not. For example, the City could not require registration or licensing of these vehicles. She heard a lot of people say that they rode them to work. There were plenty of vehicles present at the meeting that could be ridden to work and people had other options besides these scooters. So, they were not keeping people from riding to work. She thought if the Council had no further questions, then they should go to the City Clerk for her explanation and then called for the question.

Mayor Walkup asked the City Clerk to read the ordinance by number and title only.

Ordinance 9962, Relating to Motor Vehicles and Traffic and to Businesses Regulated; defining motorized skateboards and motorized play vehicles; prohibiting the use of motorized skateboards and motorized play vehicles except on private property; declaring violation to be a civil traffic violation; requiring merchants to make certain disclosures in connection with the sale of motorized skateboards and motorized play vehicles; declaring violation to be a civil infraction, amending Tucson Code Chapter 20, Article I by adding a new Section 20-30; amending Tucson Code Chapter 7 by adding a new Article XXII, consisting of Section 7-480; and declaring an emergency.

Mayor Walkup asked for a roll call on the motion.

Upon roll call, the results were:

Aye: Council Members Ibarra, West, Dunbar, Scott, and Leal;
Vice Mayor Ronstadt and Mayor Walkup.

Nay: None

Ordinance 9962 was declared passed and adopted by a roll call vote of 7 to 0.

11. CITY ATTORNEY: APPOINTMENT OF THE CITY ATTORNEY (taken out of order)

(NOTE: This item was taken out of order and considered after Item 7.)

12. APPOINTMENTS TO BOARDS, COMMISSIONS AND COMMITTEES

Mayor Walkup announced City Manager's communication number 217, dated May 10, 2004, would be received into and made a part of the record. He asked if there were any personal appointments. There were none.

13. ADJOURNMENT 9:53 p.m.

Mayor Walkup announced the Council would stand adjourned until its next regularly scheduled meeting to be held Monday, May 17, 2004, at 5:30 p.m., in the Mayor and Council Chambers in City Hall, 255 W. Alameda, Tucson, Arizona.

MAYOR

ATTEST:

CITY CLERK

CERTIFICATE OF AUTHENTICITY

I, the undersigned, have read the foregoing transcript of the meeting of the Mayor and Council of the City of Tucson, Arizona, held on the 10th day of May, 2004, and do hereby certify that it is an accurate transcription.

DEPUTY CITY CLERK

KSD:bp/lp